

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
AT DAYTON

ROGER DEAN GILLISPIE, )  
                            )  
                            )  
Plaintiff,             ) CASE NO. 3:13-cv-416-TMR  
                            )  
                            )  
-vs-                    )  
                            )  
THE CITY OF MIAMI TOWNSHIP, ET AL., ) JURY TRIAL  
                            )  
                            )  
Defendants.            ) VOLUME V  
                            )

TRANSCRIPT OF PROCEEDINGS  
THE HONORABLE **THOMAS M. ROSE**,  
UNITED STATES DISTRICT JUDGE, PRESIDING  
THURSDAY, NOVEMBER 10, 2022  
DAYTON, OH

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\*\*\* \*\*\* \*\*\* \*\*\*

1 Courtroom Deputy: Elizabeth Penski  
2 Law Clerks: Michael Mayer, Callum Morris  
3 Also Present: Roger Dean Gillispie, plaintiff; Valerie  
4 Barajas, paralegal; Matt Thibodeau, paralegal; Jeff Weber, IT  
5

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1 P-R-O-C-E-E-D-I-N-G-S

8:52 A.M.

2 (Jury in at 9:03 a.m.)

3 (In open court at 9:4 a.m.)

4 THE COURT: Good morning, everyone.

5 RESPONSE BY ALL: Good morning.

6 THE COURT: Hopefully, you had a good evening.

7 Everybody got a little rest. And I'm assuming -- correct me  
8 if I'm wrong -- that you were able to abide by the Court's  
9 admonitions. Anybody that was not?

10 (No verbal response.)

11 THE COURT: All right. Counsel ready to proceed?

12 MR. KANOVITZ: We are.

13 MR. McLANDRICH: Yes, sir.

14 THE COURT: All right. Next witness.

15 MR. KANOVITZ: Your Honor, at this time plaintiffs  
16 call Detective Moore.

17 **MATTHEW SCOTT MOORE, PLAINTIFF'S WITNESS, SWORN**

18 THE COURT: Detective, you've heard -- you've heard  
19 the problem we have here in the courtroom sometimes about able  
20 to be hearing -- ability to hear a witness. So please try to  
21 keep your voice up so that we can all -- we can all hear your  
22 responses, all right?

23 THE WITNESS: Yes, sir.

24 THE COURT: All right. You may inquire.

25 **CROSS-EXAMINATION**

1 BY MR. KANOVITZ:

2 Q. Morning.

3 Please state and spell your name for the record.

4 A. My name is Matthew Scott Moore, M-A-T-T-H-E-W  
5 S-C-O-T-T M-O-O-R-E.

6 Q. And you go by Scott, correct?

7 A. That's correct, sir.

8 Q. And you are a former employee of the Miami Township  
9 Police Department?

10 A. That's correct, sir.

11 Q. What were your dates of employment?

12 A. I don't remember the exact dates. I know that I was  
13 hired in mid 1985, and I left the department, I believe, in  
14 mid 2012.

15 Q. And your father was the chief of police of that  
16 department, correct?

17 A. At one point he had been, yes, sir.

18 Q. He was chief of police when you came on, correct?

19 A. I believe so, yes.

20 Q. And in November of 1989, you were promoted from patrol to  
21 detective, correct?

22 A. Yes, early November.

23 Q. Okay. And how old would you have been at that time?

24 A. I at this point have no idea.

25 Q. Well, what year were you born?

1       **A.**     1959.

2       **Q.**     And, let's see, in January of '95, you were reduced in  
3           rank back to patrol, correct?

4                    MR. McLANDRICH: Objection. So detective is not a  
5           promotion; it's a duty assignment. Returning to patrol is not  
6           a demotion.

7                   THE COURT: Rephrase.

8       BY MR. KANOVITZ:

9       **Q.**     Sir, immediately prior to January 1995, you had the rank  
10          of corporal, did you not?

11      **A.**     Yes.

12      **Q.**     And corporal is a higher rank than patrolman, correct?

13      **A.**     Yes.

14      **Q.**     And then in January of 1995, you were reduced back to  
15          patrolman, correct?

16      **A.**     Well, exactly not the way that you are wording. It  
17          actually was a choice.

18      **Q.**     Okay. So you chose to reduce your rank back to  
19          patrolman?

20      **A.**     Yes.

21      **Q.**     So you served as a detective for approximately how many  
22          years?

23      **A.**     Probably about 23 to 24 years out of my career of 27  
24          years.

25      **Q.**     And when you were pursuing the Best Products case, you

1       were a fresh, new detective, correct?

2       A.     I believe I had been -- I had been on the department at  
3           that time for about five years, and I had been in the  
4           detective section about a year and three months.

5       Q.     Well, sir --

6       A.     I think that's the period of time.

7       Q.     Let me see if I can refresh your recollection. So you  
8           become a detective -- you get transferred to being a detective  
9           in November of 1989, right?

10      A.     Yes.

11      Q.     And you start to be assigned to the rape investigations  
12           in spring or early summer of 1990, correct?

13      A.     So the question is, is that you are asking when I got  
14           involved with this case?

15      Q.     I am just trying to figure out -- isn't it true, sir,  
16           that you had been a detective for about six or seven months at  
17           the time that you became involved?

18      A.     Yeah, about six, probably a little over.

19      Q.     And you became the detective that drove the prosecution  
20           against Mr. Gillispie?

21           MR. McLANDRICH: Objection.

22           THE WITNESS: I --

23           THE COURT: Well --

24           MR. McLANDRICH: Just the characterization.

25           THE COURT: Just use a different term than "drove."

MOORE - CROSS (Kanovitz)

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1 BY MR. KANOVITZ:

2 Q. Okay. You are the detective who participated in the  
3 prosecution of Mr. Gillispie on behalf of the Miami Township  
4 Police Department, correct?

5 A. I'm the detective that conducted the investigation on  
6 Roger.

7 Q. And is it also true that you worked with the prosecutors?

8 A. That would be true.

9 Q. Sir, you just called him Roger. Why did you call him  
10 Roger?

11 A. Because his name is Roger Dean Gillispie.

12 Q. Well, you have sat through this whole trial, haven't you?

13 A. I have been in this trial.

14 Q. And you know that he likes to go by the name Dean, right?

15 A. I know that he goes by the name Dean with his friends.

16 Q. Well, but, basically, we didn't hear from a single person  
17 who didn't know him as Dean, correct?

18 A. Well, I think everybody that has testified thus far  
19 were people that were on your side of the testimony.

20 THE COURT: Counsel, I think it's evident that he  
21 likes to go by Dean, and the witness has answered the reason  
22 he called him Roger is because that's his name. So let's move  
23 on.

24 MR. KANOVITZ: Okay.

25 BY MR. KANOVITZ:

1       **Q.**     And when you were assisting in -- when you were doing the  
2 investigation and assisting in the prosecution of  
3 Mr. Gillispie, you believed in your heart that Mr. Gillispie  
4 was the perpetrator of the rapes you were investigating,  
5 correct?

6       **A.**     I didn't know whether he was going to end up being the  
7 suspect or not at that time, or I'm not sure that's the  
8 right term, but I didn't know that that would end up  
9 occurring up until that point where we get that first  
10 identification.

11      **Q.**     Okay. Following the identifications, you went to the  
12 prosecutors, and you said, words to the effect, "I'd like to  
13 start a prosecution against Mr. Gillispie," correct?

14      **A.**     That would be false.

15      **Q.**     Well, did you not meet with the prosecutors for purposes  
16 of getting charges against Mr. Gillispie?

17      **A.**     That is -- that is later on. I started the  
18 investigation. We went through the process. I got to a  
19 point in my investigation where we were ready to talk with  
20 the prosecutor's office to see if we could get charges  
21 through the Montgomery County Prosecutor's Office because  
22 they are the ones that make the choice as to what charge  
23 needs to be filed.

24      **Q.**     So there came a time where you went to the prosecutor's  
25 office to seek charges against Mr. Gillispie, correct?

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1       **A.**     Yes, that time did come.

2       **Q.**     And when that time came, you believed in your heart that  
3           Mr. Gillispie was the perpetrator of the rapes you were  
4           investigating?

5       **A.**     At that point, I would have believed that he was the  
6           perpetrator of these offenses, yes.

7       **Q.**     Whatever -- did?

8       **A.**     Did.

9       **Q.**     And you believed in your heart that the victims had  
10          correctly identified Dean as the perpetrator?

11      **A.**     Yes, I did.

12      **Q.**     And the actions that you took in the investigation were  
13          motivated by that belief?

14      **A.**     That's true.

15      **Q.**     And the decisions that you made in the investigation were  
16          motivated by that belief?

17      **A.**     Yes, sir.

18      **Q.**     And you continued to believe in your heart that Dean was  
19          guilty right up until the trial of this case began?

20                    MR. McLANDRICH: Objection, Your Honor. His  
21          personal belief is irrelevant.

22                    THE COURT: Well, I'll allow him to answer.

23                    THE WITNESS: I did believe that he is -- he is the  
24          person that committed these crimes, yes.

25                    BY MR. KANOVITZ:

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1       Q.     And --

2       A.     And I said did, and I actually do.

3       Q.     And that's my question, sir. Having sat through the  
4           trial and seeing all the evidence we've seen so far, you still  
5           assert that Mr. Gillispie is guilty, right?

6       A.     Yes, sir.

7       Q.     Now, let's talk about your involvement in the case.

8           There came a time where you assumed responsibility for the  
9           B.W. and C.W. investigation, correct?

10      A.     Yes, sir.

11      Q.     And sometimes that's called the Best Products  
12           investigation?

13      A.     Yes, sir.

14      Q.     And I believe we established at that time you had been a  
15           detective for about six or seven months?

16      A.     Yes, sir.

17      Q.     And it's fair to say that this rape case was the biggest  
18           case you had had thus far as a detective?

19      A.     I don't remember whether that's the case or not.

20      Q.     Well, it was the most serious case you had handled to  
21           date.

22      A.     I don't remember all the cases that I handled back  
23           then.

24      Q.     Okay. Sir, would it refresh your recollection to see  
25           your deposition that you gave in November of 2018, November

1       6th of 2018?

2       **A.**     I would imagine that it would, yes, sir.

3                    MR. KANOVITZ: Could we display -- actually, I'll  
4 just read it.

5                    BY MR. KANOVITZ:

6       **Q.**     Were you asked these questions, and did you give these  
7 answers:

8                    "Can you think of a more serious investigation" -- this  
9 is page 47, line 19, through page 48, line 2.

10          "Can you think of a more serious investigation that you  
11 worked on as a detective in the Miami Township Police  
12 Department before the Best Products rape investigation?"

13          And then there is an objection. Your counsel says, "Go  
14 ahead and answer."

15          And you said, "I don't -- I can't right offhand remember,  
16 no."

17       **A.**     I can't what?

18       **Q.**     "Right offhand remember, no."

19       **A.**     That is a possibility, yes. I don't independently  
20 remember that.

21       **Q.**     Okay. Sitting here today, you can't think of a bigger  
22 case that you had worked on in your six or seven months as  
23 detective when you got assigned the Best Products rape case,  
24 correct?

25       **A.**     Based on what the deposition is saying there, yes.

1       **Q.**     And the Best Products rape case was one of those cases  
2                  that the department gets that receives media attention, right?

3       **A.**     I believe that it had.

4       **Q.**     And it continued to, did it not?

5       **A.**     Throughout the years, yes.

6       **Q.**     And you received the case because Detective Fritz was  
7                  leaving the department, right?

8       **A.**     I did what?

9       **Q.**     You received the case because Detective Fritz was leaving  
10                 the department?

11      **A.**     Yes, sir. June 15th.

12      **Q.**     And Fritz had been the custodian of the file before you?

13      **A.**     Yes, sir.

14      **Q.**     And Fritz was a seasoned detective at that point in time,  
15                 correct?

16      **A.**     Yes.

17      **Q.**     Far more experience than you had at that time?

18      **A.**     Yes.

19      **Q.**     And he was your supervisor?

20      **A.**     Yes.

21      **Q.**     Did you look up to Fritz?

22      **A.**     Did I what?

23      **Q.**     Did you look up to him?

24      **A.**     I would say that initially, yes, I did.

25      **Q.**     You found him to be a very able detective?

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1       **A.**     I actually felt that he was an able detective. And  
2                  when I went back to the detective section, I actually wanted  
3                  to learn under him.

4       **Q.**     And you saw him to be a person of integrity?

5       **A.**     I did, but you also hear other things throughout the  
6                  department, yes.

7       **Q.**     Well, I --

8       **A.**     My personal feeling was yes.

9       **Q.**     And I don't want to talk about rumors, okay?

10      **A.**     Yes.

11      **Q.**     I want to talk about you.

12                  And you do believe him to be an honest person, do you  
13                  not?

14      **A.**     Then? Yes.

15      **Q.**     Now.

16      **A.**     Now, I'm not so sure.

17      **Q.**     Okay. You said you don't really know one way or the  
18                  other if he's an honest person?

19      **A.**     I actually have lost touch with him, and I have no idea  
20                  how he is now.

21      **Q.**     Okay. So you have no basis to have any opinion about  
22                  whether he is truthful or not, correct?

23      **A.**     No.

24      **Q.**     And what about Detective Bailey, did you look up to him?

25      **A.**     He was a good guy.

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**Q.** And he was far more seasoned than you at that time?

**A.** Yes. He had been in the detective section before me.

3 Q. But for quite a while, correct?

**A.** I'm not sure how long he had been in there.

5 Q. Okay. And you found him to be a truthful person too,  
6 correct?

7 A. For the most part.

**Q.** And you still consider him to be a truthful person?

9 A. I have no idea how he is now.

10 Q. Okay. So --

11 A. There is so much time in between. I don't know how  
12 these -- how their lives progressed, I don't know what goes  
13 on in their lives. So I can't tell you whether someone is  
14 truthful or not.

15 Q. So you have no basis from which to conclude whether  
16 Detective Bailey is a truthful person or not a truthful  
17 person, correct?

A. That would be a true statement.

19 Q. Okay, sir. We're turning to June of 1990, approximately  
20 when you took over the case from Fritz.

You received the complete file at the time you were assigned the case correct?

**A** I received a file from Detective Steve Fritz.

Q You received the complete file, correct?

**A.** I received the file that he provided to me, yes.

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1 Q. And that file was the complete file of the documents that  
2 the MTPD had, correct?

3 A. That is the file that he provided.

4 Q. Please focus on my question, sir. That file was the  
5 complete file of the documents that the MTPD had?

6 A. I guess so, yes. I mean, I received a file.

7 Q. Do you endorse the proposition that that file was the  
8 complete file that the MTPD had?

9 MR. MCLANDRICH: Objection; asked and answered.

10 THE COURT: Counsel, he basically says he received a  
11 file. He doesn't know whether it was complete or not.

12 MR. KANOVITZ: Okay. Understood, Judge.

13 BY MR. KANOVITZ:

14 Q. Okay, sir. Do you recall testifying at the second trial  
15 against Mr. Gillispie?

16 A. I know that I testified at that trial. I can't tell  
17 you what all the testimony was of everybody there or myself

18 MR. KANOVITZ: And, counsel, this will be PX9 at  
19 270 16-22

30 BY MR. KANOVITZ:

21 Q. You were under oath when you testified against  
22 Mr. Gillaspie at the second trial, correct?

23 A yes sir

24 Q. And were you asked these questions and did you give these  
25 answers.

1 MR. McLANDRICH: I'm sorry. What page are you on?

2 MR. KANOVITZ: 270 -- the transcript page 270. It's  
3 PX9, page 15.

4 MR. McLANDRICH: Give me a second to get there.

5 MR. KANOVITZ: Yes, sir.

6 MR. McLANDRICH: Go ahead.

7 BY MR. KANOVITZ:

8 Q. Were you asked these questions under oath and did you  
9 give these answers:

10 "Question: Did you have the complete file turned over to  
11 you at that time?"

12 "Answer: Yes, sir, I did."

13 "Question: Did you take any steps to review it? Had you  
14 taken any steps to review it between June 15th and June 18th?"

15 "Answer: Yes, I had."

16 So it is fair to say that you had the complete file --  
17 you received the complete file at the time that you were  
18 assigned the Best Products case, correct?

19 A. Yes, sir.

20 Q. And that file included the work that Detective Fritz and  
21 Detective Bailey had done up until that time, correct?

22 A. Yes, sir.

23 Q. And you started your investigation where Fritz and Bailey  
24 left off, correct?

25 A. Yes, sir.

1       **Q.**     And switching topics, would you agree that whoever  
2                   committed the Best Products rape case was a serial rapist?

3       **A.**     I don't remember whether I ever looked at it as being a  
4                   serial rapist.

5       **Q.**     Well, you had at least two rape events, correct?

6       **A.**     Yeah, and then -- yes.

7       **Q.**     And that person was a kidnapper, correct?

8       **A.**     Yes.

9       **Q.**     And that was a person who abducts women in broad  
10                  daylight?

11      **A.**     Well, you can abduct a person whether it be daylight or  
12                  night, but, yes, in this case it was daylight.

13      **Q.**     Well, if you abduct someone in daylight, it's arguably a  
14                  more brazen crime than if you wait until there is no one  
15                  around at night, correct?

16      **A.**     Everything can be argued.

17      **Q.**     All right. Whoever committed this was a very dangerous  
18                  man. Yes?

19      **A.**     I felt that, yes. I mean, you're talking rape,  
20                  kidnapping, robbery.

21      **Q.**     And when you were pursuing Dean for this -- for these  
22                  crimes, you believed that the man who committed those crimes  
23                  was still at large?

24      **A.**     Repeat that question.

25      **Q.**     When you were pursuing your investigation against Dean,

1 you believed that the man who committed those rapes was still  
2 at large?

3 A. I can't recall what my belief at that time was now. I  
4 mean, we're talking 30 years later. I don't know what my  
5 belief was, and I may not even be understanding your  
6 question.

7 Q. Fair enough. You believe Dean committed the rapes,  
8 correct?

9 A. That would be correct.

10 Q. And you did not have Dean in custody?

11 A. I did not.

12 Q. So isn't it true that you believed that the man who  
13 committed these rapes was still at large?

14 A. I didn't know one way or another.

15 Q. Well, if --

16 A. I was -- I was looking at Dean, or Roger, as being the  
17 suspect at that time based on some information that we had  
18 received at the police department.

19 Q. And, therefore, you believed that the person that did  
20 those rapes was not yet in custody, correct?

21 A. I did not have him in custody.

22 Q. Okay. And if the person who committed the rapes was not  
23 in custody, then the women of your community are still at  
24 risk?

25 A. That would be correct.

1       **Q.**     And as a person who's investigating a rape case, wouldn't  
2     it be prudent to check to see if similar crimes had been  
3     committed in the last two years?

4       **A.**     Well, we actually did have another offense that had  
5     occurred within that period of time.

6       **Q.**     Well, you are referring to the S.C. rape case, right?

7       **A.**     Yes.

8       **Q.**     And that was August 5th of '88?

9       **A.**     That's correct.

10      **Q.**     And the Best Products rape case was August 20th of '88?

11      **A.**     And that's correct.

12      **Q.**     And my question to you is, in the two years between  
13     August 20 of '88 and when you became assigned to the file,  
14     that's a period of time where the person that you believed did  
15     it is at large and could have committed other similar rapes,  
16     right?

17      **A.**     There could have been, but I don't remember ever seeing  
18     anything come across concerning that.

19      **Q.**     Well, my question to you is, did you look?

20      **A.**     No.

21      **Q.**     And that would have been a prudent thing to do, right?

22      **A.**     I -- if you are trying to guess about that, yes.

23      **Q.**     Well, I mean, investigators are in the business of not  
24     guessing, right?

25      **A.**     Well, I think as an investigator, you have to try to

1       guess at what direction you are going to end up going with  
2       something or a piece of information --

3       **Q.**     Well, is an investigator --

4       **A.**     -- or how something is going to be applied.

5       **Q.**     Sorry for cutting you off.

6                  As an investigator, you have tools at your disposal so  
7       that you can look into the facts, right?

8       **A.**     What tools are you talking about?

9       **Q.**     For example, you can go out and look and see if there is  
10      similar crimes that have been committed in the last two years.

11      **A.**     Well, I guess you could. I am not sure exactly how you  
12      would end up doing that. I know that we would receive  
13      teletypes that were put out by other departments. So you  
14      would review the teletypes, and if something happened to  
15      come across at that time, yes, you would probably look at  
16      that.

17      **Q.**     And you could call other police departments in the area,  
18      right?

19      **A.**     You could.

20      **Q.**     In fact, you could have called the Montgomery Sheriff's  
21      Department that had the S.C. rape case, correct?

22      **A.**     I actually had talked with Patty Matheny at Montgomery  
23      County Sheriff's Office about that rape case.

24      **Q.**     And did you ask if there had been any similar crimes  
25      committed in the last two years?

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1       **A.**     No, because at that point I was looking at her -- the  
2 case that she presently had.

3       **Q.**     There was nothing preventing you from finding out if the  
4 person that was at --

5                  MR. KANOVITZ: Actually, I'll move on, Judge.

6 BY MR. KANOVITZ:

7       **Q.**     Okay. At any rate, from the time that you started your  
8 investigation, the sole suspect that you had was Dean,  
9 correct?

10      **A.**     That would be a true statement.

11      **Q.**     And you had his work ID from Mr. Wolfe?

12      **A.**     Yes, I did.

13      **Q.**     And you had the composite also that Mr. Wolfe brought  
14 you, correct?

15      **A.**     He had brought it in, yes.

16      **Q.**     Okay. And the composite that you had was the one with  
17 the sunglasses?

18      **A.**     Yes.

19      **Q.**     Okay. And the work ID --

20                  MR. KANOVITZ: Actually, Your Honor, could we  
21 display Plaintiff's 285, page 9, which should be the work ID?

22                  THE COURT: That's already been?

23                  MR. McLANDRICH: Yes.

24                  THE COURT: No objection?

25                  MR. McLANDRICH: No.

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1                   THE COURT: It may.

2                   MR. KANOVITZ: May I confer?

3                   Go ahead and display it.

4                   (Exhibit displayed.)

5 BY MR. KANOVITZ:

6 Q. And this is the ID that you had?

7 A. Yes.

8 Q. And this picture of the whole ID has pretty good detail  
9 of Dean's hair, right?

10 A. I can see his hair, yes.

11 Q. It's dark?

12 A. It is.

13 Q. And you see that he's graying at the temples?

14 A. I -- I see that there is some lightness around that  
15 area, yes.

16 Q. Okay. And you --

17 A. I mean, it could be lighting. I don't know.

18 Q. Well, you've seen -- you've lived long enough to see  
19 people go gray?

20 A. Actually, I did at a very young age.

21 Q. And people go gray around the temples in the way that  
22 this picture appears, correct?

23 A. I do see some lightness around the temple area, yes.

24 Q. Okay. And this picture was taken in January of 1989,  
25 correct?

1       **A.**     January 27, 1989.

2       **Q.**     Okay.

3                MR. KANOVITZ: Your Honor, could we now display  
4 Plaintiff's 247, which is the composite?

5                THE COURT: Any objection?

6                MR. McLANDRICH: No, sir.

7                THE COURT: Okay. It may be.

8                MR. KANOVITZ: Thank you.

9               (Exhibit displayed.)

10              MR. KANOVITZ: Zoom in on the face, please.

11              BY MR. KANOVITZ:

12       **Q.**     You also had this composite, correct?

13       **A.**     Correct.

14       **Q.**     And so you developed Dean as your suspect by comparing  
15 the work ID that we just saw to this composite, correct?

16       **A.**     I felt that there were some similarities.

17       **Q.**     Actually, you felt that Dean was a very good match based  
18 upon looking at the ID and the composite, correct?

19       **A.**     I just said I felt there were some similarities, yes.

20       **Q.**     Well, I mean, you felt there was very strongly similar,  
21 right?

22       **A.**     Those are the words that you're using. I don't  
23 remember using them. I mean, but right now, as far as I  
24 know, it was -- they were very similar at the time.

25       **Q.**     Now, composites are in black and white, correct?

1       **A.**     Yes, they are.

2       **Q.**     So you could not see -- so -- but you also had  
3                   descriptions of the perpetrator's hair color, correct?

4       **A.**     Yes, the -- B.W. and C.W. had provided descriptions.

5       **Q.**     Well, and S.C., right?

6       **A.**     And S.C.

7       **Q.**     And S.C. had said that the man that did this to her had  
8                   light blondish hair, correct?

9       **A.**     I believe so.

10      **Q.**     And it's fair --

11                   MR. KANOVITZ:   Can I have PX85 at 9. I am sorry.  
12                   285.

13                   (Exhibit displayed.)

14                   BY MR. KANOVITZ:

15      **Q.**     It's fair to say that Dean did not have light blondish  
16                   hair, correct?

17      **A.**     That's correct.

18      **Q.**     His was dark brown?

19      **A.**     His hair is brown.

20      **Q.**     Dark brown?

21      **A.**     Okay, if you want to use the term "dark brown."

22      **Q.**     Now, B.W. said that the man that attacked her had  
23                   orangish-brown hair, right?

24      **A.**     I think so, yes.

25      **Q.**     And C.W. actually said that he had red hair with a brown

1 tint?

2 MR. McLANDRICH: I think it's the opposite.

3 MR. KANOVITZ: I don't think I do.

4 THE WITNESS: I believe that -- I know it was a  
5 reddish tint, brown hair that she had said, yeah.

6 BY MR. KANOVITZ:

7 Q. Actually --

8 A. I don't know what the exact words are. We are dealing  
9 30 years now, and I don't remember the exact words.

10 Q. Isn't it true that C.W. said he had brownish-red hair?

11 A. Yes.

12 Q. And those were the descriptions that the three women gave  
13 back in August of 1988?

14 A. Yes.

15 Q. Two years before you got involved in the case?

16 A. Yes.

17 Q. And Dean did not -- Dean had physical characteristics  
18 that contradicted that description?

19 A. Based on what you are showing at this point, yes.

20 Q. Well, and you had no reason to believe that Dean looked  
21 any different in August of 1988, did you?

22 A. Not -- not at that point, no.

23 Q. Not at any point, right?

24 A. Well, we would be jumping way ahead because there --  
25 I'm not sure how to approach this, and I'm not sure if we

1       are going to be getting way out of where we need to be at  
2       the time.

3                  THE COURT: What's the question?

4                  MR. KANOVITZ: I apologize. Could I have it read  
5       back, Judge?

6                  THE COURT: Yes.

7                  MR. KANOVITZ: Thank you.

8                  (The requested portion of the record was read as follows:

9       Well, and you had no reason to believe that Dean looked any  
10      different in August of 1988, did you?)

11                 THE WITNESS: I had no reason to believe that he  
12      looked any different in 1988, that would be correct.

13      BY MR. KANOVITZ:

14      **Q.** So the whole year of 1988?

15      **A.** I didn't see him throughout all of '88, but based on  
16      what we're looking at, if it remained the same, yes.

17      **Q.** Okay. And did you do any investigation at all to see if  
18      it remained the same throughout 1988?

19      **A.** No.

20      **Q.** So you had no reason to believe that Dean looked any  
21      different than his ID picture in August of 1988, correct?

22      **A.** I think that I had said that, yes.

23      **Q.** Now, you kept Dean as your suspect despite the difference  
24      in the hair color?

25      **A.** Yes.

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1       **Q.**     And is it the case that you did not trust the description  
2                  that the victims had given at the time of the events in  
3                  question?

4       **A.**     I don't know that I was thinking that or not. I don't  
5                  remember that.

6       **Q.**     So when you decided that you believe in your heart --

7                  MR. KANOVITZ: May I strike that, Judge?

8                  THE COURT: You may.

9                  BY MR. KANOVITZ:

10      **Q.**     At a certain point in time, you had to focus on pursuing  
11                  your case against Dean solely, correct?

12      **A.**     I did pursue the case against Gillispie.

13      **Q.**     And at that time, did you believe that the victims'  
14                  description that they had given at the time of the events in  
15                  question was accurate?

16      **A.**     I believe so.

17      **Q.**     Okay. And why --

18      **A.**     I had their statements. So I knew what they had put in  
19                  their statements.

20      **Q.**     So if their description at that time -- if you believe  
21                  their description at the time of the events in question was  
22                  accurate, why did you continue to pursue a case against Dean?

23      **A.**     Well, you know, as far as giving a description at the  
24                  time, people tend to see things in different lighting. And  
25                  hair colors, depending on your lighting at the time, could

1       be -- if you are in bright sun, could look a little bit  
2       different than if you are in low light.

3       **Q.**     Okay. Let's break that down. First of all, S.C. saw the  
4       man in the parking lot during daylight hours, correct?

5       **A.**     Correct.

6       **Q.**     And in her car during daylight hours, correct?

7       **A.**     Yes.

8       **Q.**     Okay. So she had both the complete sunlight condition  
9       and the level of light that you have when you are sitting in  
10      your car?

11      **A.**     Yes.

12      **Q.**     And she described that man as light blondish, correct?

13      **A.**     Yes.

14      **Q.**     And C.W. -- or B.W. and C.W. also saw the man in the  
15      parking lot lighting condition, right?

16      **A.**     Yes.

17      **Q.**     Also saw him in a car?

18      **A.**     Yes.

19      **Q.**     And also saw him in the woods, and this all occurred in  
20      daylight, correct?

21      **A.**     Yes.

22      **Q.**     So returning to my question, why did you keep Dean as  
23      your suspect if their descriptions contradicted his physical  
24      characteristics?

25      **A.**     I really -- the answer is, at that particular point, I

1 had a description. As to whether that description is  
2 totally accurate, you don't know.

3 Q. Okay. So you had a question in your mind as to whether  
4 the witnesses had accurately described the person that did  
5 this to them at the time of the events in question?

6 A. I guess that would be an accurate statement.

7 Q. What did you do to look into the question of whether  
8 their descriptions were accurate?

9 A. I took their descriptions on face value of what they  
10 had provided in their written statements at the time. I had  
11 no reason to doubt what they said at that time. But I also  
12 know that in previous cases and in cases throughout the  
13 years, that depending on the circumstances at the time, that  
14 people can see things a little differently. And there's a  
15 lot of factors of that, and one of those is that we were  
16 talking about different lighting conditions.

17 So it's -- it's also like with age. People, when they  
18 give us descriptions, they are just guessing as to -- or  
19 what an age range is. They are looking at the hair. They  
20 are guessing as to about a range of how tall somebody might  
21 be. It's not that they are trying to get -- they try to get  
22 it as close as they can, but without having something there  
23 to measure height to or something like that, you really  
24 can't tell the actual height of an individual unless you  
25 actually know it.

1       **Q.**     So fast forwarding, when you showed the photo lineup to  
2 S.C., were you concerned that she could misperceive dark brown  
3 hair as light blondish?

4                    MR. McLANDRICH: Objection, Your Honor.

5                    THE COURT: You can answer it if you can.

6                    THE WITNESS: I don't know what her perception would  
7 be. You are asking me to guess what someone else's perception  
8 is at the time.

9                    BY MR. KANOVITZ:

10          **Q.**    Prior to showing her the photo array of Mr. Gillispie  
11 back when he had dark brown hair, did you ask her, "What do  
12 you mean by light blondish hair?"

13          **A.**    No.

14          **Q.**    It's same for C.W. and B.W.; did you ask them those  
15 questions?

16          **A.**    No. They had already provided statements concerning  
17 what description they gave at that time.

18          **Q.**    And you were about to show them a picture of a man that  
19 had different physical characteristics, correct?

20          **A.**    Well, we're talking about one different physical  
21 characteristic.

22          **Q.**    And if it's a significant characteristic, that excludes  
23 him, correct?

24          **A.**    I --

25                    MR. McLANDRICH: Objection.

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1                   THE WITNESS: -- would not necessarily say that.

2                   THE COURT: He gave his answer.

3                   Overruled.

4 BY MR. KANOVITZ:

5                   **Q.** Another characteristic that stood out to the three women  
6 at the time of the event in question was that the man was  
7 white tan, correct?

8                   **A.** That would be a true statement.

9                   **Q.** And you had -- before you ever went to the prosecutor to  
10 prosecute Dean, you met him in person, right?

11                  **A.** Yes.

12                  **Q.** And he was not a tan person, was he?

13                  **A.** I don't remember back then.

14                  **Q.** Okay.

15                  **A.** I don't remember back then whether he had a tan at that  
16 point or not.

17                  **Q.** If he had a characteristic that matched the physical  
18 description that your -- the physical description that the  
19 women had given at the time of the events in question, you  
20 would have noted that in your report, correct?

21                  **A.** I don't know that I ever even paid attention to that.  
22 I was more interested in talking with Dean.

23                  **Q.** Okay. So when you had the opportunity to talk to Dean,  
24 you asked him questions about --

25                   MR. KANOVITZ: Actually, may I withdraw that, Judge?

1                   THE COURT: You may.

2 BY MR. KANOVITZ:

3 Q. At the time that you met with him, you were looking to  
4 prove your case against him, right?

5 A. I was looking at a lot of different things to either  
6 prove or disprove the case against him.

7 Q. Okay. And if he had a tan like the women described, that  
8 would have helped you prove the case against him?

9 A. Well, not necessarily. I mean, at that particular  
10 point, you don't know what changes were between 1988 and  
11 1990. I can't tell you whether he was out in the sun in  
12 1988 versus 1990.

13 Q. Okay. Well, this was August of 1990, correct?

14 A. I -- yeah.

15 Q. And the events in question occurred in August of 1988 --  
16 I'm sorry. Yes, 1988.

17 A. The what? The incidents?

18 Q. Yes, the incidents.

19 A. The incidents occurred on August 5th and August 20th of  
20 1988.

21 Q. Okay. Now, switching topics, another common feature  
22 between the two rape events was the involvement of cigarettes,  
23 correct?

24 A. Yes.

25 Q. S.C. reported that the man smoked a cigarette in her car,

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1           correct?

2       **A.**    Yes.

3       **Q.**    And she actually named a brand, correct?

4       **A.**    I believe so.

5       **Q.**    She said, "smoked cigarettes, possibly Winston's"?

6       **A.**    Yes.

7       **Q.**    And then B.W. and C.W. said that the man stole their pack  
8           of cigarettes and a lighter from them, correct?

9       **A.**    Yes. And there was another thing that they had stated  
10          at that time.

11      **Q.**    Well, is it relevant to the cigarettes?

12      **A.**    Yes. And that statement was, is that he had asked for  
13          a cigarette, but they never did smell smoke.

14      **Q.**    Right. When he was walking them through the woods, he  
15          asked for a cigarette, and he asked her to light it?

16      **A.**    I don't remember that part. I do remember that he had  
17          asked for a cigarette, and they never did smell smoke.

18      **Q.**    And she wasn't sure if she was able to light it or not  
19          and didn't remember smelling smoke, right?

20      **A.**    That's correct.

21      **Q.**    Okay.

22      **A.**    I don't remember the lighter specifically, but, yes.

23      **Q.**    Okay. So the man both asked for a cigarette and stole a  
24          pack of cigarettes, correct?

25      **A.**    That would be correct.

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1 Q. Okay. And you knew that Dean was a nonsmoker?

2       A.     Actually, I don't know whether I knew that at the time  
3           or not. I know that throughout time there was testimony  
4           concerning that matter.

5 Q. Well, let's rewind back to before you went to the  
6 prosecutor and sought charges.

7 A. I actually -- well, I had asked him questions about  
8 being a smoker, and he had told me no.

9 Q. And you asked him questions about being a smoker because  
10 you believed that was an important feature for whether you  
11 were going to prove a crime against him or exonerate him,  
12 correct?

13 A. Yes.

14 Q. And, now, another feature that led you to pursue your  
15 case against Dean was the fact that the man who committed  
16 these crimes used the name Roger, correct?

17 A. Yes.

18 Q. And in this case, S.C. actually asked him his name,  
19 right?

20 A. I don't remember that specifically. I do know that she  
21 stated that she had the name of Roger.

**Q:** Would it refresh your recollection to see the report?

23 | A\_Sure

24 MR. KANOVITZ: Your Honor, could plaintiff's display  
25 Plaintiff's Exhibit 138 at page 4?

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1                   THE COURT: You are talking about refreshing  
2 recollection here, right?

3                   MR. KANOVITZ: Yes.

4                   THE COURT: Is there any objection to displaying  
5 what he wishes to display? Otherwise, he needs to be shown  
6 it, let him read it, and then he will tell you whether or not  
7 it refreshes it.

8                   MR. KANOVITZ: That would be fine, Judge.

9                   THE COURT: It doesn't make any difference to me. I  
10 just want to make sure counsel is okay with it.

11                  MR. McLANDRICH: What was the number again?

12                  MR. KANOVITZ: 138, page 4.

13                  MR. McLANDRICH: My computer is slow today. I  
14 apologize.

15                  That's fine. No objection.

16                  THE COURT: It may be.

17                  MR. KANOVITZ: Thank you.

18                  (Exhibit displayed.)

19                  MR. KANOVITZ: Could you enlarge the second full  
20 paragraph, please. One down.

21 BY MR. KANOVITZ:

22 Q. Okay. I'll just read this.

23                  "The complainant continued to say that while the suspect  
24 was in her vehicle she asked his name and he told her it was  
25 Roger. He further stated that he wanted her to take him to

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1 Columbus, and then said something about a security guard, and  
2 then said something about his childhood," correct?

3 A. Yes, sir.

4 Q. So does that refresh your recollection that she asked him  
5 his name, and he gave her the name Roger?

6 A. Yes, sir.

7 Q. And would you agree with me that it's pretty common for  
8 criminals to use fake names?

9 A. I would agree with that.

10 Q. Okay. And, nevertheless, you operated under the  
11 assumption that the criminal was actually giving his real name  
12 and that his real name was Roger Dean Gillispie?

13 A. I don't know that I was operating under the assumption.  
14 I felt that it was odd that you end up having somebody  
15 brought to your attention that has the name of Roger and  
16 that the name of Roger is being used by the suspect in the  
17 case.

18 Q. So did you assume that the person who committed these  
19 crimes was giving the victim his real name?

20 A. Did I assume that? I didn't know one way or another  
21 whether he was giving her the real name. I don't know what  
22 the suspect -- what was in the suspect's mind at that time.  
23 I don't know whether the suspect would have slipped up at  
24 that time.

25 Q. So one of your operating hypotheses was that maybe he

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1 told her his name by accident; is that correct?

2 A. I'm just saying that that is a possibility.

3 Q. Okay. Now, the man also gave the name Roger to C.W. and  
4 B.W.

5 A. That would be correct.

6 Q. He told it to them in the car while he was giving him --  
7 giving them the whole story about his background, right?

8 A. I believe that's where it was at, yes.

9 Q. He told them his name was Roger, that he is from Texas,  
10 that he is a hit man, and that he gets paid \$1,000 to kill  
11 people, correct?

12 A. All of those statements were made.

13 Q. And then, after the whole thing was over and as he was  
14 exiting the vehicle, he told them again, he reminded them his  
15 name was Roger, correct?

16 A. I believe so.

17 Q. And Roger is a pretty popular name?

18 A. Yeah, I've known a lot of Rogers.

19 Q. And so was it your assumption that your suspect was  
20 named -- actually named Roger, or that your suspect was using  
21 Roger as a fake name?

22 A. Your -- repeat that question.

23 Q. Was it your assumption that your suspect was actually  
24 named Roger or that he was giving Roger as a fake name?

25 MR. McLANDRICH: Objection; asked and answered.

1                   THE COURT: I'll let him answer.

2                   THE WITNESS: You are asking about an assumption. I  
3 didn't know one way or another whether he was giving a real  
4 name or a fake name.

5                   THE COURT: There you go.

6 BY MR. KANOVITZ:

7                   **Q.** Part of the job of investigators is to formulate  
8 hypotheses and then look into whether they are true or not,  
9 correct?

10                  **A.** And in this case -- yes.

11                  **Q.** And another feature that caused you to pursue your case  
12 against Dean was that the man said he was a security guard,  
13 right?

14                  **A.** And that would be a true statement.

15                  **Q.** Okay. And what the man would do is he would approach  
16 these women in parking lots after they left the store, right?

17                  **A.** That's correct.

18                  **Q.** And he would tell them, "I'm a security guard for the  
19 store. I need to look in your purse," correct?

20                  **A.** I know he identified himself as security. I don't  
21 remember the specific statements. It's been 30 years. I do  
22 know that he identified himself to all of the girls as being  
23 security.

24                  **Q.** So maybe you don't remember the specific words, but you  
25 remember that his MO was to approach women in a parking lot,

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1 claim to be a security guard, and then slip into their cars,  
2 correct?

3 THE COURT: Counsel, I think he answered that.

4 MR. KANOVITZ: Okay. I apologize. I should listen  
5 better.

6 THE COURT: Well, no. I'm just saying I think he  
7 answered that. He says he remembers that the person  
8 represented himself as a security guard in all those  
9 instances.

10 MR. KANOVITZ: Okay. Thank you.

11 BY MR. KANOVITZ:

12 Q. You understood that he was using the claim of being a  
13 security guard in order to slip into the lady's cars, correct?

14 A. I know that there were statements made about the fact  
15 that he was security, yes.

16 Q. Okay. Did you, when you were conducting your  
17 investigation, assume that he was claiming to be a security  
18 guard because he wanted the women to know what he did for a  
19 living or that he was claiming to be a security guard so that  
20 he could slip into their cars?

21 A. I am not going to assume as to why he was doing that.

22 Q. Well, if both -- so you had no -- you never considered  
23 the question of whether he was using security guard -- strike  
24 that.

25 You never bothered to consider whether he was

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1 impersonating a security guard or really was a security guard,  
2 correct?

3 A. I never really what again?

4 Q. You never considered whether he was impersonating a  
5 security guard or was actually a security guard?

6 A. I'm not sure what I considered then. I just know that  
7 that was one of the descriptors that was given at the times  
8 of the offenses.

9 Q. And the man who claimed to be a security guard did not  
10 display any kind of badge to the women, right?

11 A. I do not believe so.

12 Q. Did not give them -- show them, here's my security guard  
13 ID. Didn't do that, right?

14 A. I do not believe that that happened.

15 Q. And the man was not wearing a uniform of any kind,  
16 correct?

17 A. That would be correct.

18 Q. So literally anybody could have claimed to be a security  
19 guard under those circumstances without having to actually be  
20 a security guard, correct?

21 A. Yes.

22 Q. Okay. And so then why -- actually, strike that.

23 Okay. Switching topics, sir. It is -- it is true --  
24 well, is it the case that you are an employee of the Miami  
25 Township Police Department or that you are employed by the

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1 government of the Miami Township itself?

2 MR. McLANDRICH: Objection, Your Honor.

3 THE COURT: Right now?

4 MR. KANOVITZ: May I withdraw?

5 THE COURT: Okay.

6 BY MR. KANOVITZ:

7 Q. Would you agree with me that in your capacity as a Miami  
8 Township Police Department detective you were a government  
9 agent?

10 MR. McLANDRICH: Your Honor, this has all been  
11 stipulated to.

12 MR. KANOVITZ: I'll withdraw.

13 THE COURT: I think he's already testified, and I  
14 think it's been stipulated to, and I think he testified that  
15 he was an employee of the Miami Township.

16 MR. McLANDRICH: We stipulate to color of law.

17 MR. OWENS: It wasn't in the stipulation.

18 THE COURT: Were you an employee of Miami Township?

19 THE WITNESS: I was an employee of Miami Township.

20 BY MR. KANOVITZ:

21 Q. Okay. Sir, switching topics, was Miami Township Police  
22 Department a busy department?

23 A. Yes.

24 Q. And were you busy when you worked there?

25 A. Very.

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1       **Q.**     Approximately how many arrests would you make a year?

2       **A.**     I can't tell you --

3                    MR. McLANDRICH: You know, can we have a time frame?

4                    THE WITNESS: I can't tell you.

5                    THE COURT: Hold on.

6                    MR. McLANDRICH: I just wanted a time frame, Your  
7 Honor. Is he talking about as a patrolman? as a detective?  
8 What he is talking about?

9 BY MR. KANOVITZ:

10       **Q.**     All right. In the late 1980s, how many arrests would you  
11 make a year?

12       **A.**     I can't give you a number. I made quite a few.

13       **Q.**     More than a hundred a year?

14       **A.**     I can't give you a number, but it was high.

15       **Q.**     How about what is the -- what's your best estimate of the  
16 number of arrests that the Miami Township Police Department  
17 would make per year in that time frame?

18       **A.**     I have no idea.

19       **Q.**     More than a hundred, less than a hundred?

20                    MR. McLANDRICH: Objection.

21                    THE WITNESS: Are you talking about the whole  
22 department?

23 BY MR. KANOVITZ:

24       **Q.**     Yes, I am.

25                    MR. McLANDRICH: Objection.

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1                   THE COURT: Hold on. He indicated he had no idea.

2                   Do you have any idea about the number of arrests that  
3                   were made by the Miami Township Police Department?

4                   THE WITNESS: I don't know the exact number, no. I  
5                   know that there -- as a whole, for the whole police  
6                   department, there would have been a lot more than 100.

7                   BY MR. KANOVITZ:

8                   Q.     Okay. More than 500? Per year.

9                   MR. McLANDRICH: Objection; relevance.

10                  THE COURT: Sustained.

11                  BY MR. KANOVITZ:

12                  Q.     And when people would get arrested, they'd be brought to  
13                  the station and booked, correct?

14                  A.     Yes.

15                  Q.     And how many police officers were there -- actually,  
16                  strike that.

17                  How many detectives were there in the Miami Township  
18                  Police Department in the late 1980s?

19                  MR. McLANDRICH: Objection; relevance.

20                  THE COURT: I am going to let him answer if he  
21                  knows.

22                  THE WITNESS: I don't know the exact number. It was  
23                  not a lot.

24                  BY MR. KANOVITZ:

25                  Q.     Was it --

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1       **A.**     It would be probably -- I think there was three to four  
2 maybe. I don't remember exactly, though.

3       **Q.**     And did that continue to be the approximate size when you  
4 were working on the Best Products rape investigation?

5       **A.**     I believe so.

6       **Q.**     Okay, sir, switching topics.

7              Early on in your investigation, you called Dean on the  
8 telephone, right?

9       **A.**     Yes.

10      **Q.**     And when you spoke to him on the phone, he asked why you  
11 were trying to contact him, right?

12      **A.**     I believe so, yes.

13      **Q.**     And you told him you didn't really want to talk on the  
14 phone about why you were contacting him. You wanted to meet  
15 in person, correct?

16      **A.**     Yes.

17      **Q.**     And that's -- that's a normal investigatory thing to do,  
18 correct?

19      **A.**     Yes.

20      **Q.**     And he offered to call you back in a few days to set up  
21 an appointment to meet in person, correct?

22      **A.**     Okay. This is the conversation on June 19th.

23      **Q.**     Actually -- that sounds about right.

24      **A.**     Yeah. And your question again was?

25      **Q.**     After you said, no, I'd like to meet in person, he

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1 offered to call you back and set up an appointment in a couple  
2 days?

3 A. He wanted, I believe it was, in a few days or three  
4 days. He put it off, and then he ends up making a statement  
5 to me about him being busy for the next two weeks. And I  
6 was still trying to get him to come to the police  
7 department. And he -- I forget exactly what the statement  
8 was back and forth, but he ended up hanging up on me.

9 Q. Let's break it down. I want to go step by step in this  
10 conversation.

11 After you said, "No, I want to meet in person," he said,  
12 "I'll call you back in a couple days to make an appointment,"  
13 right?

14 A. I believe so.

15 Q. And you said, "No, I want to make an appointment now,"  
16 correct?

17 A. Well, I don't know that I used that inflection in my  
18 voice, but, yes.

19 Q. But that is the information you communicated to him?

20 A. That would be a true statement.

21 Q. Okay. And he said, "I'm busy."

22 A. He did say that.

23 Q. And then you threatened him?

24 A. I never threatened him. I don't consider it a threat.

25 Q. Do you recall what you said to him after that?

1       **A.**     Not exactly. I have looked over the reports. I can't  
2     remember everything in the reports even after looking at  
3     them from 30 years ago.

4       **Q.**     So what you responded to Mr. Gillispie with is you said,  
5     "I told him, 'Well, you handle it the way you want, and I will  
6     handle this situation in whatever way it takes, but it will  
7     get cleared up,'" correct?

8       **A.**     I -- what was said before that, though.

9       **Q.**     "Gillispie stated, 'I will call you in a few days to set  
10    up a meeting.' I then stated, 'Well, let's set it up now.'  
11    He said, 'Man, I don't have time. I'm tied up for the next  
12    two weeks. I'll be busy.' At this point I told him I wanted  
13    to get it set up sooner. He said -- he stated, 'Well, I'm  
14    busy.' And you said -- 'I told him, Well, you handle it the  
15    way you want, and I will handle the situation in whatever way  
16    it takes, but it will get cleared up.'"

17      **A.**     Yes.

18      **Q.**     And --

19      **A.**     Again, we're dealing with your inflection in your voice  
20    as to trying to make it sound as if it's really strong.

21      **Q.**     Okay.

22      **A.**     I don't know that that occurred.

23      **Q.**     So you think you didn't say what I just read in a strong  
24    voice?

25      **A.**     Oh, no, I'm not saying that. I'm saying --

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1                   THE COURT: He's agreed -- he agreed he said what  
2 you read in the statement. He is --

3                   Detective, you need to just answer the questions, and  
4 then if your counsel wishes to go back and talk about certain  
5 answers that you made, you can do that.

6                   But he's answered the question.

7                   MR. KANOVITZ: Okay. Thank you, Judge.

8 BY MR. KANOVITZ:

9 Q. When you said those words, what did you intend for Dean  
10 to think?

11 A. I cannot tell you what Dean would think.

12                   THE COURT: The question is what did you intend him  
13 to think.

14                   THE WITNESS: That I would get this resolved one way  
15 or another.

16                   THE COURT: Next question.

17 BY MR. KANOVITZ:

18 Q. Would you agree that it would have been unprofessional to  
19 threaten Dean when he asked for two weeks before meeting with  
20 you?

21 MR. McLANDRICH: Objection.

22                   THE COURT: He's testified, Counsel, that he didn't  
23 threaten him.

24                   MR. KANOVITZ: I'm just -- well, I believe that's a  
25 subject for the jury to decide.

1                   THE COURT: Not for him to decide.

2                   MR. KANOVITZ: Fair enough.

3                   THE COURT: He's indicated he did not threaten.

4 You've got the conversation.

5                   MR. KANOVITZ: Okay. May I rephrase with one last  
6 question on that topic?

7                   THE COURT: You may.

8                   MR. KANOVITZ: Okay.

9 BY MR. KANOVITZ:

10                  Q. Sir, if he perceived your words as a threat, it would  
11 have been natural for him to hang up, correct?

12                  MR. McLANDRICH: Objection.

13                  THE COURT: You can answer that question.

14                  THE WITNESS: I can't assume as to what he  
15 perceives.

16 BY MR. KANOVITZ:

17                  Q. Okay, sir. Why wouldn't you just wait the two weeks?

18                  A. I'm trying to keep the investigation moving along.

19                  Q. The case was already two years old at that point.

20                  A. I agree with that.

21                  Q. And you didn't even jump on the case when you first  
22 received it, right?

23                  A. That's because I had other cases going at that time.

24                  Q. Right. You glanced at the file, and you threw it in a  
25 drawer?

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1 A. That's correct.

2 Q. So why didn't you give another two weeks for Dean to, you  
3 know, make his appointment?

4 A. I have no idea at this point.

5 Q. Okay. If you had waited the two weeks, then you could  
6 have taken a picture of Dean instead of using his work ID in  
7 the photo array, correct?

8 A. At that -- I'm not -- at that particular point, I had a  
9 conversation with him on 6-19. He had hung up on me. It  
10 was obvious that he wasn't going to be coming in. I'm  
11 trying to move my case along. So I end up sending his work  
12 ID to the Miami Valley Regional Crime Lab two days later.

13 Q. You had a choice to say, during the conversation, "Okay,  
14 let's schedule it for two weeks out," right?

15 MR. MCLANDRICH: Objection, Your Honor.

16 THE COURT: I think, Counsel, he's indicated that he  
17 didn't want to wait two weeks because he wanted to keep the  
18 case going.

19 Detective, did you have a choice to say something else?

20 THE WITNESS: Can you repeat the question again?

21 BY MR. KANOVITZ:

22 Q. Sure. If you had waited the two weeks, you could have  
23 taken a picture of Dean instead of using his work ID, correct?

24       A. I could not assume at that particular point that he was  
25 going to come into the police department. So at that point

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1 I wanted to continue the movement of the case forward.

2 Q. Okay.

3 A. You keep asking me to make assumptions and perceptions,  
4 and I don't know what is in somebody's minds at that time.

5 Q. Okay.

6 A. I mean, after 30 years, I don't even remember a lot of  
7 time what was in my mind.

8 Q. Eventually, Dean did come to see you at the police  
9 department, right?

10 A. Yes, he did.

11 Q. And he let you take pictures of him when he came in?

12 A. Now, we -- I believe we are talking about the 8-8 --

13 Q. That sounds about right.

14 A. -- '90?

15 Q. That sounds about right.

16 A. Yes.

17 Q. And he didn't have to let you take pictures of him when  
18 he came in, did he?

19 A. No.

20 Q. You took pictures of his torso and his face?

21 A. I believe so.

22 Q. And then you took pictures of his -- whole length of his  
23 body, right?

24 A. I believe so.

25 Q. Now, at a certain point in time, you sent Dean's employee

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1 ID off so that the picture of his face could get blown up,  
2 correct?

3 A. I sent his security ID card to the Miami Valley  
4 Regional Crime Laboratory on June 21st of 1990.

5 Q. And you asked them to blow up his face?

6 A. I asked them to make me a -- mugshot size photos.

7 I believe that in the trial's transcript --

8 THE COURT: There is no question in front of you.

9 MR. KANOVITZ: Counsel, this is PX1, page 72, lines  
10 11 through 22.

11 THE COURT: What are we doing with this, Counsel?

12 MR. KANOVITZ: Impeachment.

13 MR. McLANDRICH: I'm sorry. Page?

14 MR. KANOVITZ: 72.

15 (Exhibit displayed.)

16 BY MR. KANOVITZ:

17 Q. Sir, you testified at a preliminary hearing in Dean's  
18 case on -- on December 7th of 1990, correct? Do you recall  
19 that?

20 A. I -- a preliminary hearing? I am not sure what the  
21 date was. I think there might have been a preliminary  
22 hearing.

23 Q. Okay. You participated in a hearing prior to trial to  
24 talk about the eyewitness identifications, correct?

25 A. I believe so, yes.

1       **Q.**     And that was approximately December 7th of 1990, correct?

2     Do you recall that?

3       **A.**     I don't recall the date.

4       **Q.**     Do you recall being under oath at that hearing, though?

5       **A.**     I would imagine that if I was in any hearing within a  
6     court, that I would at some point be placed under oath, yes.

7       **Q.**     And were you asked these questions, and did you give  
8     these answers:

9                 "Question: Sir, let me just simply ask this to make sure  
10     we're talking about the same thing. I thought you had stated  
11     in your direct examination and previously on cross-examination  
12     that you took the photograph from Defendant's Exhibit A, which  
13     was on his security card, and then you had that blown up and  
14     then placed into State's Exhibit 1; is that correct?"

15                 "Answer: Yes, I had that blown up from the security  
16     identification card if that's the term you're using it in."

17                 "Question: So the term 'blown-up' is not misleading in  
18     any manner. It's the term you used; is that correct?"

19                 "Answer: Yes, sir."

20     Were you asked those questions, and did you give those  
21     answers?

22       **A.**     Yes, sir.

23       **Q.**     So you sent Dean's photo off to have his face blown up?

24       **A.**     Actually, if we pull the Miami Valley Regional Crime  
25     Lab sheet, I believe that I wrote on there that it was

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1 mugshot size. But in this statement here, yes, the term  
2 "blown-up" is being used.

3 Q. And you knew that when you sent the picture off to the  
4 Miami Valley Regional Crime Lab they were going to blow up his  
5 face?

6 MR. McLANDRICH: Objection.

7 THE COURT: Did you know anything -- did you know?

8 THE WITNESS: I just knew they were going to make  
9 pictures for me.

10 BY MR. KANOVITZ:

11 Q. Okay. Sir, you testified at Dean's second criminal  
12 trial, correct?

13 A. Yes.

14 Q. You were under oath at that time, correct?

15 A. Yes.

16 MR. KANOVITZ: Counsel, this is page 271, lines --

17 MR. McLANDRICH: Of what?

18 MR. KANOVITZ: I am sorry. PX9.

19 MR. McLANDRICH: Page 271?

20 MR. KANOVITZ: Page 271, line 20, through 272, line  
21 7. I'm sorry. Let's go through line 10.

22 MR. McLANDRICH: What line?

23 MR. KANOVITZ: 271, line 20, through 272, line 10.

24 MR. McLANDRICH: I'm there.

25 (Exhibit displayed.)

1 BY MR. KANOVITZ:

2 Q. Sir, when you were under oath, were you asked these  
3 questions and did you give these answers:

4 "Question: When you sent the security ID cards to the  
5 Miami Valley Regional Crime Lab, which card or cards did you  
6 send?"

7 "Answer: I sent State's Exhibit 19, security ID card  
8 depicting Roger Dean Gillispie."

9 "Question: And what was the purpose in seeking an  
10 enlargement of that particular ID card?"

11 "I wanted to obtain a photograph of Roger Dean Gillispie  
12 to place in a photo lineup."

13 "Question: Were you able to" -- sorry.

14 "Question: Were you able to obtain an enlargement of the  
15 card in question?"

16 "Answer: Yes."

17 "Okay. And approximately how long did that take to  
18 receive that particular enlargement?"

19 "Answer: I think it was between 18 and 30 days."

20 Were you asked those questions, and did you give those  
21 answers?

22 A. Yes, sir.

23 Q. And so isn't it true that you understood that you were  
24 sending off the picture to be enlarged by the Miami Valley  
25 Regional Crime Lab?

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1       **A.**     That's the wording that's being used.

2                    MR. KANOVITZ: Your Honor, at this time, we'd like  
3                    to publish Plaintiff's Exhibit 285, page 7.

4                    THE COURT: And this is for the purpose of?

5                    MR. KANOVITZ: To question him on the photo array.

6                    MR. McLANDRICH: Is that what it is?

7                    MR. KANOVITZ: Yeah.

8                    MR. McLANDRICH: No objection.

9                    THE COURT: That is the photo array?

10                  MR. KANOVITZ: Yes.

11                  THE COURT: Okay.

12                  MS. FRICK: No objection.

13                  (Exhibit displayed.)

14                  BY MR. KANOVITZ:

15                  **Q.**     Okay. Sir, please tell the jury which of these pictures  
16                  is the one that you had blown up.

17                  **A.**     The picture that I had made from the crime lab was  
18                  Photo Number 6.

19                  **Q.**     And did you have any of the other pictures that you were  
20                  displaying in this photo array blown up?

21                  **A.**     No.

22                  **Q.**     And just quickly, you see the ruler running along the  
23                  bottom there?

24                  **A.**     Yes, the orange ruler.

25                  **Q.**     Does that accurately depict the approximate size of the

1 photo array as the witnesses would have viewed it?

2 A. I -- I believe so, I mean.

3 Q. Okay. And showing you this demonstrative, is that  
4 basically the size of the photo array (indicating)?

5 A. Yes, sir.

6 THE COURT: What are you referring to, Counsel?

7 MR. KANOVITZ: I am holding a demonstrative which is  
8 marked as State's Exhibit 1 and State's Exhibit 26.

9 THE COURT: Isn't that the same --

10 MR. KANOVITZ: It is.

11 THE COURT: -- that's on the screen?

12 MR. KANOVITZ: I am just trying to show its actual,  
13 real-life size, what it looked like.

14 THE COURT: Okay.

15 BY MR. KANOVITZ:

16 Q. Okay. Now, when you chose to enlarge the picture of  
17 Dean's face, were you hoping that the victims would pick him  
18 out?

19 MR. McLANDRICH: Objection.

20 THE COURT: Well, were you hoping?

21 THE WITNESS: I cannot hope what somebody is going  
22 to do. I think that I did make a statement concerning that in  
23 my report, from what I remember after reviewing it here  
24 recently.

25 BY MR. KANOVITZ:

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1       **Q.**     And did the statement in your report reflect your actual  
2 intentions at the time that you presented the photo arrays?

3       **A.**     Repeat that question, how you are wording it.

4       **Q.**     Did the statement in your report accurately reflect your  
5 intentions at the time that you presented the photo arrays?

6       **A.**     Any time that I showed a photo array, you are hoping  
7 that a victim or a witness can identify the individual. It  
8 does not mean that that's what they are going to do.

9       **Q.**     As an investigator, you are supposed to be neutral, are  
10 you not?

11      **A.**     Yes. And that's why you end up asking the question, or  
12 telling them during your instructions that that individual  
13 may or may not be in that lineup.

14      **Q.**     Understood. But I am talking about your intentions and  
15 hopes.

16                Okay, you are supposed to be neutral, correct?

17      **A.**     Yes.

18      **Q.**     And being neutral means that if a person is innocent, you  
19 hope that the participants do not identify that person,  
20 correct?

21      **A.**     I don't know what would be in that individual's mind at  
22 that time, and I can't assume what they -- what their  
23 beliefs are at that time.

24                MR. KANOVITZ: Counsel -- Your Honor, I'd like to  
25 display Plaintiff's 104, page 3.

1                   THE COURT: What is it?

2                   MR. KANOVITZ: It's his report.

3                   MR. McLANDRICH: That's fine if it's his report. No  
4 objection if it's his --

5                   THE COURT: All right.

6                   (Exhibit displayed.)

7 BY MR. KANOVITZ:

8 Q. Okay, sir. Last sentence of this paragraph, you're  
9 talking about getting the picture blown up, and you say, "Upon  
10 receiving the photographs back from the lab, I will put  
11 together a photo lineup for show to the victims in this case,  
12 in hopes of identification," correct?

13 A. I think that I -- I think that I said that. That is in  
14 my report.

15                   MR. KANOVITZ: Take it down.

16                   THE COURT: Counsel, you just referred him to a  
17 certain portion of a report. Can you give me a -- for the  
18 purposes of the record, give me a paragraph, a line, some kind  
19 of specifics with regard to what he has just testified to.

20                   MR. KANOVITZ: Yes. I apologize about that, Your  
21 Honor.

22                   So this is the first full paragraph under 6-21-90 on page  
23 3 of Plaintiff's Exhibit 104. Thank you.

24                   THE COURT: And for your planning purposes, in about  
25 five minutes we are going to recess. We are going to recess

1 for morning break.

2 MR. KANOVITZ: Actually, Judge, this would be a good  
3 point to take a break, if we could.

4 THE COURT: Ladies and gentlemen, we are going to  
5 take our morning break, about 15, 20 minutes. Relax. Please  
6 don't discuss the case amongst yourselves or with anyone else  
7 back there -- but no one else should be back there, but please  
8 don't discuss it amongst yourselves.

9 THE COURTROOM DEPUTY: All rise. This court stands  
10 in recess.

11 (Jury out at 10:20 a.m.)

12 (Recess at 10:20 a.m.)

13 (Jury in at 10:39 a.m.)

14 (In open court at 10:40 a.m.)

15 THE COURT: We are back on the record.

16 Counsel ready to proceed?

17 MR. KANOVITZ: I am.

18 MR. McLANDRICH: Yes, sir.

19 THE COURT: You may proceed.

20 BY MR. KANOVITZ:

21 Q. Okay, sir. When we broke, we were talking about the  
22 topic of the photo lineup, right?

23 A. I believe so, yes.

24 Q. And there's different terms that get used for the same  
25 thing: photo lineup, photo array, six-pack sometimes?

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1       **A.**     Yes, sir.

2       **Q.**     So if I use those terms interchangeably, we both know  
3              what we're talking about, right?

4       **A.**     Okay.

5       **Q.**     Now, you assembled the photo lineup in the summer of  
6              1990, correct?

7       **A.**     Yes.

8       **Q.**     And you would agree that in 1990 you knew that police  
9              officers were not supposed to put together a photo lineup that  
10             singles out a suspect in any way, correct?

11      **A.**     We are supposed to try to find images that are similar  
12             to each other.

13      **Q.**     So was it your understanding that it was okay to single  
14             out a suspect in 1990?

15      **A.**     I never singled out a suspect in 1990.

16      **Q.**     I am just asking for your understanding.

17      **A.**     I am not saying that.

18      **Q.**     Okay. So was it your understanding that you are not  
19             supposed to do anything to single out a suspect?

20              MR. McLANDRICH: Objection, Your Honor.

21              THE COURT: I think -- I think his answer to this  
22             point has been -- I understand he is not saying exactly what  
23             you are asking him, but his answer is that it was his duty to  
24             make a lineup of what he believes is similar people.

25              Ask him again.

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1                   MR. KANOVITZ: Thank you, Your Honor.

2 BY MR. KANOVITZ:

3 Q. Had you received any training in doing photo lineups back  
4 in 1990?

5 A. Not that I remember, no.

6 Q. Okay. And did you know back in 1990 that it could be  
7 suggestive to present a photo lineup where the suspect was  
8 singled out?

9 A. I -- I knew that you could have a photo lineup where  
10 someone would perceive that something is suggestive. It  
11 depends on what you are looking at in a photo lineup.

12 Q. Well, there is some common sense that just goes into  
13 doing a photo lineup, right?

14 A. Yes.

15 Q. Okay. And one of those common sense things is it  
16 wouldn't be fair to use a picture that singled out your  
17 suspect, correct?

18 A. If you'd -- I guess if you did that or you felt that at  
19 the time, but that's not how I felt about that at that time.

20 Q. Well, I'm not asking how you felt about this photo array.  
21 I am asking you, you had the common sense to know not to use a  
22 photo that singled out a suspect, correct?

23 A. That would be correct.

24 Q. Okay. And you knew enough to know that if you did single  
25 out a suspect, you were risking a misidentification, right?

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1       **A.**     If you do, but you have to know exactly what you're  
2     looking at as far as it being singled out. You keep using  
3     that term, but what one person views as being singled out  
4     may not be the view of what another person is. I know where  
5     you are going with this.

6                 But, again, the way someone views something when you  
7     are looking at a photo lineup, there are different factors  
8     in which they have to view. Now, when I am showing a photo  
9     lineup, all I want them to do actually is just view the  
10    face.

11                But all photo lineups can be argumentative when they  
12    are made up.

13               THE COURT: Detective, did you know that you were  
14    not to set up a photo lineup that singled out one of the  
15    individuals that appear in that lineup?

16               THE WITNESS: Yes.

17               BY MR. KANOVITZ:

18       **Q.**     And you knew that if you did single out somebody, you  
19     risked misidentification?

20       **A.**     If you do.

21       **Q.**     Yes. And you knew that a misidentification would cause  
22     an unfair trial, correct?

23       **A.**     It could.

24       **Q.**     And so let's -- let's go through your photo lineup  
25     together.

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1                   MR. KANOVITZ: Your Honor, could we republish  
2 Plaintiff's 285 at --

3                   THE COURT: You may.

4                   (Exhibit displayed.)

5 BY MR. KANOVITZ:

6 Q. Okay, sir. Looking over this array, can we agree that  
7 nobody that you selected for this array has light blondish  
8 hair?

9 A. That's because I was trying to make all of the image --

10                  THE COURT: Sir --

11                  THE WITNESS: That would be true.

12                  THE COURT: Detective -- yes, okay.

13 BY MR. KANOVITZ:

14 Q. Can we agree that none of the pictures you selected had  
15 orangish-brown hair -- sorry. Can we agree that none of the  
16 pictures you selected had orangish-brown hair?

17 A. Again, it's down to lighting, but there is one image  
18 that I believe does.

19 Q. Which image is that?

20 A. 1.

21 Q. So 1 is your definition of orangish-brown hair?

22 A. I know that there is -- I'm just saying that there is a  
23 reddish tint. It's brown, but you have a reddish tint.

24 Q. Sir, your assumption was that the three victims were all  
25 describing the same perpetrator, right?

1       **A.**     I don't know what I would be assuming.

2       **Q.**     Okay. Well, you pursued Dean for all three of those  
3              rapes.

4       **A.**     I don't know that I agree with the term of "pursue,"  
5              but, yes, Dean, or Roger, was the person of interest in this  
6              case. And, yes, I did show photo lineups.

7       **Q.**     Sir, isn't it true that you believed that the women were  
8              all describing a single perpetrator?

9       **A.**     Not just due to that factor, but, yes.

10      **Q.**     Okay. And so you understood that the terms they used to  
11              describe the hair, they were all trying to describe the same  
12              guy?

13      **A.**     Yes.

14      **Q.**     Just from their different ways of describing color,  
15              correct?

16      **A.**     Yes.

17      **Q.**     Okay. And -- okay. So let's go through these photos.  
18              Tell the jury who the two gentlemen are along the left-hand  
19              margin there, Number 1 and Number 4.

20      **A.**     Number 4 is Detective Sergeant Tim Wilson, and Number 4  
21              is Officer John DePetrio.

22      **Q.**     Let's get that. You used the number 4 twice. Is 1  
23              Detective Sergeant Wilson and 4 Detective DePetrio?

24      **A.**     Yes, sir.

25      **Q.**     And why are they in ties and jackets?

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1       A.     Well, I see that Officer DePetrio is in a jacket. I  
2 can't see his tie. And Tim Wilson is in a tie. That's  
3 because that's how they appeared the day that I took the  
4 picture to use in the photo lineup.

5       Q.     What day was that?

6       A.     I don't -- I can't remember.

7       Q.     And that's how detectives in the Miami Township Police  
8 Department typically dressed, right?

9       A.     Yes. We wore suits and ties, but not all the time, but  
10 most of the time.

11      Q.     Okay. So that's how you dressed too?

12      A.     Yes.

13      Q.     And do you agree that using Miami Township police  
14 officers as fillers in a lineup could be a problematic  
15 procedure? Strike that.

16                    MR. KANOVITZ: May I rephrase that, Your Honor?

17                    BY MR. KANOVITZ:

18      Q.     Do you agree that using Miami Township Police  
19 Department's department police officers as fillers could be  
20 suggestive to the witness?

21      A.     No. My witness doesn't know whether they are police  
22 officers or not.

23      Q.     Well, they were dressed the exact same way you dress.

24                    THE COURT: Is that a question?

25                    MR. KANOVITZ: Sorry. Yes.

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1 BY MR. KANOVITZ:

2 Q. Isn't it true that they were dressed the exact same way  
3 you dressed?

4 A. Yes.

5 Q. And the witnesses were capable of seeing how you dressed?

6 A. Yes.

7 Q. Okay. And you understood that the witnesses might be  
8 able to tell that those two people were detectives?

9 A. No, I did not understand that.

10 Q. Okay.

11 A. The --

12 THE COURT: Okay. You've answered the question.

13 BY MR. KANOVITZ:

14 Q. Well, in addition to how they were dressed, the victims  
15 might actually recognize these men from when they came to the  
16 Miami Township Police Department, correct?

17 A. At the time that I took those photos, no, I did not  
18 believe that they could -- would know that they would be  
19 officers or that they would recognize them. Neither one of  
20 these -- or neither of the victims -- or any of the victims  
21 lived within this area.

22 Q. Well, let's break that down, sir. My question to you,  
23 first off, was, isn't it true that you recognized that the  
24 victims might recognize these people from having been at the  
25 police station?

1       A.     That was not my belief.

2       Q.     Okay. What did you do to check to make sure that they  
3            wouldn't have recognized these two gentlemen from the police  
4            station?

5       A.     I did nothing. I took the photographs and placed them  
6            in the lineup. I knew that my -- or the victims in this  
7            case, being C.W. and B.W., I believe at the time lived in  
8            Sidney, Ohio, which is quite a ways from here, and that S.C.  
9            lived in Harrison Township, clear over on the other side of  
10           Dayton.

11      Q.     What was the basis of your belief that the victims would  
12           not have recognized these two gentlemen from having been at  
13           the Miami Township Police Department?

14      A.     I think I just answered that by saying the fact that  
15           they were out of this area. They were not within this area  
16           to have known these officers. There was --

17                   THE COURT: Okay. That's an answer.

18                   Counsel.

19                   BY MR. KANOVITZ:

20      Q.     Isn't it true, sir, that the victims were at the police  
21           station numerous times?

22      A.     I'm not sure about numerous, but multiple.

23      Q.     They were there very early, in the wee hours on August  
24           21st, right?

25      A.     Oh, okay, yeah, going back to August of '88.

1       **Q.**     Of '88, yes, correct.

2       **A.**     Yes, they had been at the police department then too.

3           I was looking in my mind as to when I started my case.

4       **Q.**     I understand. Did you do anything to check to see if  
5           Wilson and/or DePetrio were on duty on 8-21?

6       **A.**     I don't know if DePetrio was --

7       **Q.**     It's a yes-or-no question. Did you do anything to check?

8                   MR. McLANDRICH: Objection.

9                   THE COURT: It is a yes-or-no question. If you want  
10          to explain it, then you can request, and I can allow you to  
11          explain it. So it's a yes-or-no question.

12                   THE WITNESS: Ask the question again.

13          BY MR. KANOVITZ:

14       **Q.**     Sure. Did you do anything to check if Detective Wilson  
15          or Detective DePetrio were on duty on 8-21-88?

16       **A.**     No.

17                   THE COURT: Do you wish to explain that?

18                   THE WITNESS: Mr. Wilson was -- at the time of this  
19          incident, was not a employee of Miami Township Police  
20          Department. He actually was an employee down in Warren  
21          County, which is even further away from Sidney, Ohio, and  
22          Harrison Township.

23          BY MR. KANOVITZ:

24       **Q.**     Okay. So let's just focus on DePetrio then. I did not  
25          know that fact.

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1 A. Okay.

2 Q. So did you do anything to check to see if DePetrio was on  
3 duty on 8-21-88?

4 A. No.

5 Q. Okay. The women came back again the morning of 8-22-88,  
6 correct?

7 A. I believe that they did, yes.

8 Q. Did you do anything to check if DePetrio was on duty on  
9 8-22-88?

10 A. Well, okay. So we're sitting here, and we're talking  
11 about 1988. I was not assigned the case in 1988. I had  
12 nothing to do --

13 THE COURT: Detective, if you don't know, you can  
14 say you don't know.

15 THE WITNESS: Okay. No, I had nothing to do.

16 BY MR. KANOVITZ:

17 Q. Okay, sir. You weren't there on 8-22-88 to know if they  
18 were working that day, right? Or you wouldn't remember if you  
19 were, right?

**A.** I guess if we're talking about 1988, no.

21 Q. Okay. But it is true that the Miami Township Police  
22 Department maintains records of when people are scheduled  
23 work, correct?

24 | A. Yes.

25 Q. And did you check those records?

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1       **A.**     No.

2       **Q.**     Okay. And the women returned again on September 28,  
3                   1988, correct? Pick up the clothes?

4                   THE COURT: If you know.

5                   THE WITNESS: I know that the clothes had gotten  
6                   picked up, yes.

7                  BY MR. KANOVITZ:

8       **Q.**     And you knew it was released to those women, right?

9       **A.**     I know after reviewing the case in 1990, yes.

10      **Q.**     Understood.

11      **A.**     Yes.

12      **Q.**     So before you presented the photo array to the women, you  
13                   knew that they had been there on September of 28 -- September  
14                   28, 1988, correct?

15      **A.**     Yes, I knew that they -- I mean, based on me reviewing  
16                   the report, yes, I knew that.

17      **Q.**     And did you do anything to check to see if DePetrio was  
18                   on duty on September 28, 1988?

19      **A.**     I think I already answered that, but, no.

20      **Q.**     And when did -- when did Detective Sergeant Wilson come  
21                   to work for the MTPD?

22      **A.**     He came in after Fritz was leaving.

23      **Q.**     Okay.

24      **A.**     I mean, it was like within just a short period of time.  
25                   I think they may have even been about one's going out the

1 door and one's coming in the door, basically.

2 Q. So like late spring/early summer of '90?

3 A. I believe that it was mid June.

4 Q. And so Wilson could have been on duty when you presented  
5 the photo array to B.W. and C.W., correct?

6 A. When I presented the photo lineup?

7 Q. Yes.

8 A. Detective Sergeant Tim Wilson was a day detective. So  
9 I don't know that he would have been on duty at that time.

10 Q. What was the hours for day shift?

11 A. 7 to 3.

12 Q. Okay, sir. B.W. came down to the police station to  
13 review a photo array with you on July 17, 1990, at 11:07 a.m.

14 THE COURT: Counsel, what are you doing? What are  
15 you reading?

16 MR. KANOVITZ: I'm asking him a question. I'm  
17 not -- I'm just -- I was looking so I knew what to put into  
18 the question.

19 THE COURT: You are not putting anything into the  
20 record, okay.

21 MR. KANOVITZ: That wasn't supposed to go up.

22 Sorry.

23 THE WITNESS: Okay, so ask the question again.

24 BY MR. KANOVITZ:

25 Q. Sure. B.W. came to the department to view a photo lineup

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1       with you at 11:07 a.m. on July 17, 1990.

2       **A.**     Yes.

3       **Q.**     Did you do anything to make sure that Wilson wasn't on  
4           duty at that time?

5       **A.**     What day of the week was that?

6       **Q.**     Do you remember what days of the week Wilson worked right  
7           now?

8       **A.**     I know that he worked Monday through Fridays, but I  
9           know that we also could end up being called out at the time.

10      **Q.**     According to your police report, July 17, 1990, was a  
11           Tuesday.

12      **A.**     Okay.

13      **Q.**     So he could very well have been at the department when  
14           she arrived.

15      **A.**     Could have, but I don't know that he was.

16      **Q.**     Okay. And you did nothing to check?

17      **A.**     That would be a true statement, yes.

18      **Q.**     Did DePetrio work days?

19      **A.**     DePetrio was -- I'm not sure exactly what his schedule  
20           was because I didn't directly work with him. I was -- he  
21           was not in our detective section. I know that our  
22           schedules, we could potentially have different days or  
23           different shifts. And there was overtime. So you never  
24           knew when somebody would be working at that time.

25      **Q.**     Okay. So before presenting the photo array, you did

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1 nothing to check to see if the witnesses might have viewed  
2 Detective DePetrio?

3 A. No.

4 MR. KANOVITZ: Can I have the photo array back up.  
5 (Exhibit displayed.)

6 BY MR. KANOVITZ:

7 Q. There were also pictures up in the station of the  
8 detectives, correct?

9 A. I don't remember.

10 Q. We can ask another witness about that.

11 Okay. Now, you testified just a few minutes ago that you  
12 took Polaroids of Detective Sergeant Wilson and Detective  
13 DePetrio for purposes of putting them in this photo array,  
14 correct?

15 A. That's correct, sir.

16 Q. And you had plenty of other sources -- I'm sorry. Strike  
17 that.

18 Using the terms that you use with photo arrays, you have  
19 a suspect -- right? -- is one of the pictures, correct?

20 A. The person of interest, yes.

21 Q. And the rest of them are called fillers, correct?

22 A. I had never used that term, but I know that it has been  
23 used as being that, yes.

24 Q. Okay. So when I use the term "fillers," you'll know what  
25 I am talking about.

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1       **A.**     Okay.

2       **Q.**     You had many other sources to find pictures of fillers  
3              other than going and taking pictures of your colleagues,  
4              correct?

5       **A.**     Yes. And I went through them.

6       **Q.**     We'll get there.

7              So the Miami Township Police Department maintained  
8              binders of all the booking photos that it took each year,  
9              correct?

10      **A.**     That's correct.

11      **Q.**     And it was common to use booking photos as fillers,  
12              correct?

13      **A.**     You could, but we also had a secondary file that we  
14              used for lineups too.

15      **Q.**     Those were the street Polaroids, right?

16      **A.**     Those would have been street Polaroids where officers  
17              had contact with individuals, took photos, and they got  
18              filed --

19      **Q.**     Okay. So --

20      **A.**     -- based on descriptors.

21      **Q.**     So now we talked about two additional sources for finding  
22              fillers other than just going and taking pictures of your  
23              colleagues, correct?

24      **A.**     That's correct.

25      **Q.**     Okay. And you started to say that you checked them.

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1 A. I went through books of photos. I also went through  
2 the index file that we kept of Polaroid photos.

3 Q. And why -- if you had access to all those photos and went  
4 through all those photos, why did you use the pictures of  
5 Wilson and DePetrio?

6 A. Because everything that I was looking at at the time I  
7 didn't feel was -- was images that I could use.

8 Q. Why didn't you think you could use them?

9 A. It's hard to say. There was hundreds of photos that I  
10 went through. So, I mean, at -- I was trying to find people  
11 in this case that are all white, all male, all had brown  
12 hair, all had mustache. And I'm not saying that there was  
13 not other photos, but those photos that I had seen with  
14 those descriptors were not photos that I felt would be fit  
15 into this photo lineup. So that's the reason.

16 Q. Okay. So let's do a little math here.

17 MR. KANOVITZ: Can I have the document camera?

18 BY MR. KANOVITZ:

19 Q. You said that there were three to four detectives in this  
20 time frame working for the MTPD, correct?

21 A. I believed that that is about the area where we were  
22 at, yes.

23 Q. Okay. So let's use four in order to give you the most  
24 credit. And of those four, you picked out two, correct?

25 A. Yes.

1       **Q.**     And then you also said there were hundreds of other  
2     pictures that you looked through, correct?

3       **A.**     I went through hundreds of pictures.

4       **Q.**     Okay. So I am just going to write "hundreds." And of  
5     those, you picked --

6                    MR. KANOVITZ: May I have the document camera?

7                    THE COURT: What do you want to display?

8                    MR. KANOVITZ: Just the math. It's probably not  
9     worth it.

10                  THE COURT: I'm not telling you. I just don't know  
11     what you are doing.

12                  MR. KANOVITZ: I'm showing the ratios.

13                  THE COURT: All right.

14                  (Document displayed.)

15                  BY MR. KANOVITZ:

16        **Q.**     So out of hundreds of filler pictures that you had access  
17     to, you found zero that were a better match for Dean, correct?

18                  MR. McLANDRICH: Objection. That couldn't be  
19     possibly correct, right? Because there's six people, and two  
20     of them are detectives, and one of them's Gillispie. So,  
21     obviously, three of the others came out of the other hundreds  
22     of photos.

23                  BY MR. KANOVITZ:

24        **Q.**     Actually, the other people in that photo array did not  
25     come out of the department's binders of booking photos, did

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1 | they?

2 A. I would have to look at them again.

3 MR. KANOVITZ: Okay. Could we put it back up.

4 (Exhibit displayed.)

5 BY MR. KANOVITZ:

6 Q. Okay, sir. Number 5 was one of those street photo  
7 Polaroids, right? That's not a booking photo.

8 A. I believe you're correct.

9 Q. And Number 2 was a guy that you were investigating on  
10 another case, and you got his photo from Dayton Police  
11 Department, right?

12 A. I don't remember that. I think that was a picture that  
13 was in the file.

14 Q. Okay. We can agree that he doesn't have any placard  
15 hanging around his chest with a booking ID, right?

16 A. I guess, unless it's hanging lower than where it shows.

17 Q. I mean, you don't see --

18 A. I don't see one.

19 Q. Fair enough. And then I misspoke. Number 3 is a booking  
20 photo, right?

21 THE COURT: If you know. Don't start guessing.

22 THE WITNESS: Yeah. I don't know for sure.

23 BY MR. KANOVITZ:

24 Q. Okay. Well, at any rate, either you found zero or one  
25 booking photo --

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1 MR. KANOVITZ: May I have the document camera back?

2 (Document displayed.)

3 BY MR. KANOVITZ:

4 Q. You either found zero photos or one booking photo that  
5 were a better match for Mr. Gillispie than the two detectives,  
6 correct?

7 A. I'm not sure what your question is. I'm not good at  
8 the math stuff.

9 THE COURT: I think his question is you found --  
10 there were four detectives. You found two. There are  
11 supposedly a number of booking photos, and you only found one;  
12 is that correct?

13 THE WITNESS: Yes.

14 THE COURT: All right.

15 MR. KANOVITZ: May I have the photo back up. Thank  
16 you.

17 (Exhibit displayed.)

18 BY MR. KANOVITZ:

19 Q. Now, Detective Sergeant Wilson was actually your  
20 supervisor, was he not?

21 A. He was.

22 Q. So he was the -- so your supervisor at the Miami Township  
23 Police Department was aware of what you were doing?

24 A. He knew that I was working on the case and -- yes.

25 Q. He knew you were taking his picture for purposes of

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1           putting it in a photo array?

2         A.    Yes, he did.

3         Q.    And he would have actually reviewed your work, right?

4         A.    I actually had taken the photo lineup in there after it  
5           had been prepared and showed it to my supervisor, and he  
6           looked at it, yes.

7         Q.    Okay. All right, switching topics.

8               The pictures that you selected are people -- actually,  
9           going back to Wilson, Wilson was 38 years old at the time this  
10           picture was taken, correct?

11        A.    I don't remember what his age was.

12        Q.    Would it refresh your recollection to see your testimony  
13           from the first criminal trial?

14        A.    Yes, sir.

15        Q.    Okay.

16               MR. KANOVITZ: Your Honor, I'd like to display  
17           Plaintiff's Exhibit 3, page 171, lines 21 through 25.

18               THE COURT: I am assuming, counsel -- and we've done  
19           this throughout this -- there is no objection with regard to  
20           these refreshing of the recollection or the impeachment that  
21           those transcript parts are displayed? We usually don't do  
22           that, but we have done that in this case.

23               MR. McLANDRICH: Yes, Your Honor.

24               THE COURT: You have no problem?

25               MR. McLANDRICH: No.

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1                   THE COURT: Any problem back there?

2                   MS. FRICK: No, Your Honor.

3                   THE COURT: All right.

4                   MR. KANOVITZ: It's page 38 of the exhibit, page 171  
5 of the transcript, starting at line 18 through the end.

6 Actually, I am sorry. Start at line 16.

7                   (Exhibit displayed.)

8 BY MR. KANOVITZ:

9                   **Q.** "Question: Two of them are police officers, aren't  
10 they?"

11                  "Answer: Yes sir, they are."

12                  "Question: One of whom is a man by the name of Sergeant  
13 Wilson?"

14                  "Answer: Yes, sir."

15                  "Sergeant Wilson is how old?"

16                  "Answer: Upper 30s?"

17                  "Question: 37?"

18                  "He's probably around there, yes. I don't remember his  
19 exact age."

20                  Does that refresh your recollection, sir?

21                  **A.** Yes, sir.

22                  THE COURT: Counsel, small point, but wasn't his  
23 original answer "I don't remember"?

24                  MR. KANOVITZ: Yes, but he doesn't remember today,  
25 and so I am trying to refresh his recollection from back then.

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1                   THE COURT: At which time he didn't remember either.

2                   MR. KANOVITZ: Well, he knew it was in the upper 30s  
3 and was okay with the number 37.

4                   I understand the Court's point. I was close, but not  
5 right on the target.

6                   THE COURT: Okay.

7 BY MR. KANOVITZ:

8 Q. So Wilson was in his upper 30s at the time he took that  
9 picture, correct?

10 A. Yes.

11 Q. And -- okay.

12                   MR. KANOVITZ: Can we go back to the photo array,  
13 please.

14 (Exhibit displayed.)

15 BY MR. KANOVITZ:

16 Q. Okay. We're turning to the topic of the size of the  
17 heads.

18 You chose to use pictures that, some of which were -- had  
19 the head taking up a large portion of the box and some of  
20 which had the heads taking up a tiny portion of the box,  
21 correct?

22 A. There are different sizes of heads in the photo lineup.

23 Q. And whose head is the biggest?

24 A. I would probably say that Roger's is close to at least  
25 one other in there, yes.

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1 Q. By "Roger," you mean Dean, correct?

2 A. Yes.

3 Q. And -- okay. Would you agree that his head is the  
4 largest?

5 A. If it is, it's slightly, yes.

6 Q. Okay. And would you agree that -- okay. But -- okay,  
7 it's slightly larger than Number 3, I assume is what you are  
8 talking about, right?

**A.** That would be correct.

10 Q. Okay. Would you agree it's a lot larger than Number 4?

11 A. I would agree.

12 Q. Number 5?

13 A. Well, we are sitting here, and we are talking about  
14 larger. The thing that you have in the photos is depth  
15 perception.

16 THE COURT: Well, Detective, the only question is,  
17 do you believe it's larger.

18 THE WITNESS: It is.

19 BY MR. KANOVITZ:

Q. Larger than 1?

21 | A. Yes.

22 | Q. And

23           A.       And, yes.

24 Q. Now, havi

25 Mr. Gillispie, correct?

25 Mr. Gillispie, correct?

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1 MR. McLANDRICH: Objection.

2 MR. KANOVITZ: Response?

3 THE COURT: Basis for the objection?

4 MR. McLANDRICH: Well, we -- I'll withdraw the  
5 objection.

6 THE COURT: Do you believe that -- do you believe  
7 that the -- I guess the fact that the head's larger pointed  
8 him out?

9 THE WITNESS: No.

10 BY MR. KANOVITZ:

11 Q. Okay. So you would not agree with me that having the  
12 largest head tended to single out Dean, correct?

13 A. No.

14 Q. And you could have, if you had chosen to, use pictures  
15 where everybody's head was the same size as Dean's head,  
16 correct?

17 A. If I could find those.

18 Q. Well, you had -- you had options available to you, right?

19 A. I looked through options.

20 Q. Okay. Well, one option is you could have taken  
21 DePetrio's picture up closer, right?

22 A. I guess so at that point, yes.

23 Q. Tell the jury why you chose not to do that.

24 A. I just took a picture of him. It's not going to make a  
25 choice -- a difference as to whether it's bigger or smaller.

1       The bottom line is that they are viewing the faces at the  
2 time. They are to focus on the face. It's -- you are not  
3 looking at size. In fact, I think our instructions even say  
4 something about that.

5       **Q.**     Sir, my -- okay. Is that your answer for why you chose  
6 not to take DePetrio closer up?

7       **A.**     I don't -- I can't sit here and tell you exactly why  
8 the photo was taken the way that it was back then.

9       **Q.**     You keep using the past tense, sir.

10      **A.**     I don't remember.

11      **Q.**     You're the one that took it, right? I am sorry -- the  
12 passive voice. You're the one that took --

13               THE COURT: Well, his response is that he can't  
14 remember why he chose it back then.

15               THE WITNESS: I just took an average free photo.

16          BY MR. KANOVITZ:

17      **Q.**     Sitting here today, could you think of any justification  
18 for not taking DePetrio's photo closer up so that his head  
19 matched the side of Mr. Gillispie's?

20      **A.**     Sitting here today, no.

21      **Q.**     Same question for Detective Sergeant Wilson.

22      **A.**     No.

23      **Q.**     And, now, the Photos 2, 3, and 5, those photos were  
24 preexisting. You didn't take those photos yourself or at  
25 least in that time frame, correct?

1       **A.**     Correct.

2       **Q.**     But you could have sent them off to the lab to have them  
3               blown up too, right?

4       **A.**     I guess that you could have, yes.

5       **Q.**     Tell the jury why you didn't do that.

6       **A.**     It was a choice. You're not -- you keep saying that  
7               they are going to -- well, I just -- I didn't do it. I  
8               didn't make that choice.

9       **Q.**     Sitting here today, can you think of any justification  
10              for not sending off the rest of the photos to the crime lab to  
11              be blown up?

12      **A.**     No.

13      **Q.**     Okay. Now, in addition to having the largest head, the  
14              blow-up of Dean's photo also has an orange background. Do you  
15              see that?

16      **A.**     I see the picture, and I see the background. I don't  
17              agree to the term of "orange."

18      **Q.**     Well, what color would you say it is, sir?

19      **A.**     It's a goldish color.

20      **Q.**     Okay. We will use that term. He has a goldish color  
21              background, correct?

22      **A.**     Yes, sir.

23      **Q.**     And no one else has a background that color?

24      **A.**     Actually, they are -- all six photos have different  
25              colored backgrounds.

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1 Q. Well, 5, 2, and 3 all have white backgrounds, correct?

**A.** Actually, I think the Number 1 has more of like a --

**Q.** That wasn't my question -- and I am sorry to step on

4 you -- but 5, 2, and 3 all have white backgrounds, do they  
5 not?

A. 5, 2, and 3 have lighter backgrounds.

7 Q. So light as to be called white, correct?

8 MR. McLANDRICH: Objection.

9 THE COURT: Are they white?

10 THE WI

11 BY MR. KANOVIT

12 Q. Of white?

A. They are light colored.

Q. They are different shades of white?

15 A. No. I sa

16 light colored.

Q. Shades of what color?

18 A. Well, I know that the -- I believe it is Number 2 from

19 the other -- b

image on the screen. But I know that when I looked at the

other lineup, there was like one of the photos was showing

up that looked like it had a rose-colored background, there

23 was one that looked like it was a light blue background,

there was the one that looks like it's close to a white

background, and then you have the one that has the wood door

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1       but has -- the way the light hits it, it gives off a lighter  
2       color yellowish background.

3       **Q.**      Let's stick with 2, 5, and 3. I promise you we are going  
4       to get to 4.

5                 2, 5, and 3, would you agree that the backgrounds of  
6       those photos are far lighter than the background of  
7       Mr. Gillispie's photo?

8       **A.**      Okay, I would agree to that.

9       **Q.**      Okay. And let's go ahead and go to 4. As you testified  
10      to, it's pretty clear that DePetrio is standing in front of a  
11      wood door, right?

12      **A.**      Yes, sir.

13      **Q.**      And when you say that the background is lighter, you are  
14      just talking about the part where the flash hit the door,  
15      right?

16      **A.**      That, or it's a lighting thing, yes.

17      **Q.**      Okay. But just above that, we can see a dark wood door,  
18      right?

19      **A.**      That's correct.

20      **Q.**      And then moving to 1, it's clear that he's not standing  
21      in front of any sort of background, right? Or sitting,  
22      whatever he's doing?

23      **A.**      I believe that he was sitting.

24      **Q.**      In his office.

25      **A.**      There is something in the background. I think it might

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1 be a table.

**Q.** Because he was sitting in his office, right?

3 | A. Yes.

4 Q. And you can tell that from looking at this photo,  
5 correct?

**A.** I can look at the photo and see that, yes.

7 Q. Now, you had other options than to chose photos with  
8 substantially different backgrounds than Mr. Gillispie's  
9 background, correct?

**A.** All the photos have different backgrounds.

11 Q. That wasn't my question. Can you answer the question I  
12 asked you?

16 BY MR. KANOVITZ:

17 Q. My question is you had options other than to use photos  
18 that had substantially different backgrounds than  
19 Mr. Gillispie?

THE COURT: Do you understand that question?

THE WITNESS: I reviewed other photos. I made the choices to use these photos. There was no one else involved to pick and use the photos.

24 BY MR. KANOVITZ:

25 Q. Well, sir, you could have taken DePetrio in front of a

1 golden-colored background if you chose, right?

2 A. I could have taken a picture of DePetrio, I guess,  
3 anywhere. I could have taken him outside and asked him to  
4 go outside. But it's -- it's not what was done at that  
5 time.

6 Q. Well, you used the passive voice. It's not what you did  
7 at that time, correct?

8 A. I'm not understanding that.

9 Q. Okay. You could have waited two weeks and then taken  
10 Dean's picture in front of a white background, correct?

11 A. At that particular time, I had no reason to believe  
12 that Roger was going to be coming into the police  
13 department. He had already hung up on me.

14 Q. At what particular time are you referring to, sir?

15 A. On 6-19.

16 Q. Okay.

17 A. 1990.

18 Q. Fast forwarding just a little bit, on 8-8, Mr. Gillispie  
19 came to the police station, and you took his picture in front  
20 of a white background, correct?

21 A. I do not remember where the backgrounds were. I  
22 haven't even seen the pictures.

23 THE COURT: Do you remember taking his picture?

24 THE WITNESS: Yes.

25 BY MR. KANOVITZ:

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1       **Q.**     And isn't it true that there were white backgrounds you  
2                  could have taken it against in the police department?

3       **A.**     I don't know.

4       **Q.**     So you don't recall if there were any kind of light-  
5                  colored walls in the police department?

6       **A.**     Not at that time. We had -- the police department's --

7                  THE COURT: He does not remember.

8                  MR. KANOVITZ: Okay.

9                  BY MR. KANOVITZ:

10       **Q.**     Now, fast forwarding to the end of August, so about six  
11                  weeks after you showed this photo array to B.W., you then  
12                  showed a photo -- the same photo array to S.C., right?

13       **A.**     Yes.

14       **Q.**     And by that time, you actually had a Polaroid of Dean  
15                  that you took in the police department, correct?

16       **A.**     Yes.

17       **Q.**     And yet you chose to continue to use the color with the  
18                  gold background and -- I'm sorry. You chose to continue to  
19                  use the photo with the gold background and the blown-up face?

20       **A.**     I kept the lineups the same instead of introducing into  
21                  this investigation multiple lineups. I used the same photo  
22                  lineup to keep the continuity and everything within that in  
23                  a straight line.

24       **Q.**     Was there anything stopping you from substituting the  
25                  gold background with the blown-up face for the picture you

1 took at the police station when you went and showed the photo  
2 array to S.C.?

3 A. Was there anything stopping me? No.

4 Q. So you made a conscious choice not to do that?

5 A. I made a conscious choice to keep the lineups the same  
6 throughout my investigation.

7 Q. Now, another thing you could have done to account for the  
8 backgrounds is you could have just blocked them out, right?

9 A. I don't know how I would have done that.

10 Q. Well, you are allowed to place covers over the nonfacial  
11 portions of the pictures so that all photos will appear alike,  
12 correct?

13 A. I didn't know that at that time.

14 Q. Sir, I mean, that's --

15 A. I can tell you that we did cover up, like, if there was  
16 number placards or something on there, we could try to cover  
17 up numbers or anything like that.

18 Q. And so you could have used -- done the same thing to  
19 cover up the backgrounds, right?

20 A. That was just not done.

21 Q. My question is, you could have done that?

22 A. If you want me to assume something, I guess I could,  
23 yes.

24 Q. Well, just like you blacked out the placards, you could  
25 have blacked out the backgrounds?

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1       **A.**     I feel that that is argumentative, but we -- that was  
2 not our practice.

3                 THE COURT:    Okay. One, he's answered he didn't know  
4 how to do that; and, two, could you do that? Do you know  
5 whether or not you could do that?

6                 THE WITNESS:   It was not a practice.

7                 MR. KANOVITZ:   For the record, Your Honor, I don't  
8 believe he answered that he didn't know how to do that. He  
9 said just, "I had never seen it done." But he knew how to  
10 black out parts of a picture.

11                May I ask that question?

12                THE COURT:    You may.

13                BY MR. KANOVITZ:

14       **Q.**     Sir, is it true you knew how to black out parts of a  
15 picture for a photo array?

16       **A.**     I wouldn't have done that.

17       **Q.**     My question is, isn't it true you knew how to do it?

18       **A.**     Okay. I guess anybody would know, so, yes.

19       **Q.**     Okay. It's common sense, right?

20       **A.**     I guess. I mean, we're -- everything is seeming to be  
21 argumentative.

22       **Q.**     Okay. Sir, another option that you had available to you  
23 was to use other GM badges as fillers, correct?

24       **A.**     Could have.

25       **Q.**     And you actually possessed GM badges that were like and

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1 similar to Mr. Gillispie?

2 A. The images in general, they were similar.

3 Q. They were like and similar, correct?

4 A. If you want to use that term.

5 Q. I mean, that's a term you've used, correct?

6 A. I believe so. At some point in this.

7 Q. Okay. So you would agree that the badges you had from GM  
8 were like and similar to the picture you used in Number 6,  
9 correct?

10 A. Yes, sir.

11 Q. And those were of people other than Mr. Gillispie?

12 A. Yes, sir.

13 Q. Okay. Thank you. Okay, moving forward.

14 After you created the photo array, you eventually started  
15 presenting it to the victims, right?

16 A. Yes.

17 Q. And by the time you presented the photo array to the  
18 victims, almost two weeks had passed since the events in  
19 question?

20 A. Yes.

21 Q. Had you previously in your career ever done a photo array  
22 with witnesses after so much time had past?

23 A. I don't remember.

24 Q. Have you ever done it since?

25 A. I don't remember.

1       **Q.**     Okay. You would agree that the three victims who you  
2                  showed the lineup to were under a very stressful situation  
3                  when they viewed the perpetrator, correct?

4       **A.**     At the time of the incidence, yes.

5       **Q.**     And that's the only time that they had to view the  
6                  perpetrator was at the time of the incident, correct?

7       **A.**     Correct.

8       **Q.**     They had a gun pointed at them?

9       **A.**     They did.

10      **Q.**     And then at times they were blindfolded?

11      **A.**     Yes, I believe so.

12      **Q.**     Okay. And at least for the 8-20 event, the perpetrator  
13                  wore sunglasses that masked part of his face, correct?

14      **A.**     He wore sunglasses, yes.

15      **Q.**     And it masked part of his face, correct?

16      **A.**     I guess so, yes.

17      **Q.**     And at times the women tried to look away from the man's  
18                  face because they were scared?

19      **A.**     I don't remember that being stated. In fact, I know in  
20                  the incident, it was completely the opposite because the  
21                  suspect directed them to look at him.

22      **Q.**     At a certain point in time, he said, "Look at me" --

23      **A.**     Yes.

24      **Q.**     -- right? But at other times, when they weren't being  
25                  ordered to do so, they tried to look away 'cause they were

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1 scared, correct?

2 A. I can't assume to know what they were trying to do at  
3 that time. I don't remember that being said.

4 THE COURT: He doesn't remember that. Move on.

5 BY MR. KANOVITZ:

6 Q. You sat through both of Mr. Gillispie's trials?

7 A. Yes, sir.

8 Q. You heard all three of the victims testify?

9 A. Yes, sir.

10 Q. In fact, you heard all of the witnesses testify?

11 A. Yes.

12 Q. And you were there in order to assist the prosecutor do  
13 the prosecutor's duties?

14 A. Anything that he needed or asked of me I would have  
15 done.

16 Q. Okay. Well, I mean, but that was the purpose for you to  
17 attend, right?

18 A. My purpose was to attend to assist the prosecutor.

19 Q. Okay. And you were there on behalf of the State, like a  
20 representative?

21 A. I would -- yes, I sat with the prosecutor at the  
22 tables.

23 Q. Okay. Now, the first victim that you presented the  
24 lineup to was C.W., right?

25 A. Yes, on July 16.

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1       **Q.**     Thank you. That was my next question. July 16, 1988.

2       **A.**     July 16 --

3       **Q.**     I'm sorry.

4       **A.**     -- 1990.

5       **Q.**     I apologize. Yes.

6                  You presented to C.W. on July 16, 1990?

7       **A.**     Yes, sir.

8       **Q.**     And this was about a month after the phone call that you  
9                  had with Dean where he had asked you to wait two weeks?

10      **A.**     You're talking about the June 19th telephone call?

11      **Q.**     Yes.

12      **A.**     Yes.

13      **Q.**     And, now, you had some conversation with C.W. prior to  
14                 her coming to the department to view the photo array, correct?

15      **A.**     I had conversation with her prior to coming to view the  
16                 photo? Well, I would have had to call her to ask her to  
17                 come in.

18      **Q.**     So the answer is yes, you had --

19      **A.**     Yes.

20      **Q.**     -- a prior conversation.

21                  And you created no report documenting your conversation  
22                 with her when you made that call, correct?

23      **A.**     That's true.

24      **Q.**     So we don't know if any contamination occurred during  
25                 that call, correct?

1 MR. McLANDRICH: Objection.

2 THE COURT: Sustained.

3 BY MR. KANOVITZ:

4 Q. We don't know what you said to her during that call,  
5 correct?

6 MR. McLANDRICH: Objection.

7 THE COURT: Counsel, if you want to know what he  
8 said, ask her -- ask him.

9 MR. KANOVITZ: Okay.

10 BY MR. KANOVITZ:

11 Q. So what did you say when C.W. picked up the phone?

12 A. I don't remember the exact wording of what was said. I  
13 know that in response to that call, that she ended up coming  
14 to the police department.

15 Q. Okay. Well, let's not skip over the call.

16 Based on your practices, what do you expect you would  
17 have said to her at the time that you placed the call and she  
18 answered the phone?

19 A. I don't remember at this time. You are asking me for  
20 an assumption.

21 Q. Well, let me ask you some specifics.

22 Was she surprised to hear from the police after two  
23 years?

24 A. I don't know what her feeling was at the time. I would  
25 probably think that she would be.

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1 Q. Did she ask you if you had found someone to be a suspect?

2 A. I don't remember that.

3 Q. And did she ask you if the person had hurt anyone in the  
4 last two years?

5 A. I -- I don't remember that at this time.

6 Q. Did she ask you how you determined that -- to make this  
7 man a suspect?

8 A. And I don't -- you are talking about the telephone  
9 call, right?

10 Q. Yes, yes.

11 A. I don't remember that.

12 Q. Did she tell you anything about how good her memory was  
13 from two years ago?

14 A. I don't know.

15 Q. Did she talk to you at all about what happened to her  
16 during the crime?

17 A. I don't know what was said during that telephone call.  
18 I just know as a response to the call, that she ended up  
19 coming out to the police department.

20 Q. Did you ask her how she was doing?

A. It would be an assumption.

22 Q. And would you also assume you would have asked how her  
23 sister was doing?

24 A. I don't know if I would have ever said anything about  
25 her sister at that point.

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1       **Q.**     Okay. And did you ask her what she meant when she used  
2                  the term "orangish-brown"?

3       **A.**     I don't know that I ever asked that question.

4       **Q.**     Okay. How far -- I'm sorry. How long was it between the  
5                  phone call where you contacted her after it had been two years  
6                  and when she finally came to the police station?

7       **A.**     I don't think there was a lot of time. Within a day or  
8                  two.

9       **Q.**     Okay. So she came down quick, to the best of your  
10                 recollection?

11      **A.**     Yes, sir.

12      **Q.**     Okay. And when she arrived, you took her back to the  
13                 detective division portion of the police department, right?

14      **A.**     I didn't take her -- or did I. Yes, I think -- I think  
15                 we would have been in the old detective section at that  
16                 time.

17      **Q.**     And you read her what are called the photographic showup  
18                 instructions, right?

19      **A.**     I read her photographic lineup instructions, correct.

20      **Q.**     And then you had her sign it?

21      **A.**     She signed, dated, and timed it.

22      **Q.**     And then you flipped over the photo array and showed her  
23                 the pictures, right?

24      **A.**     Yes.

25      **Q.**     And then she stared at the photo array for two minutes,

1 right?

2 A. Well, I don't know if she stared at it the whole time  
3 for two minutes. The time from when I bring her -- bring  
4 her in, set her down, read the photographic lineup  
5 instructions to her, she signs, dates, and times them, and  
6 then I flip over the photo array, and then we have some  
7 other factors which lead into that. So the two-minute time  
8 period is actually including everything from Point A to  
9 Point B.

10 And I think it was documented on those documents to  
11 show what time I started to what time that it ended.

12 Q. Okay, sir. You just testified to a whole bunch of steps,  
13 from bringing her back there to talking to her to getting a  
14 identification. Did you say all those things occurred in two  
15 minutes, correct?

16 A. Those were the things that I did, yes.

17 Q. That's not my question. I'm not asking what you did.

18 A. Yes.

19 Q. You are saying that all of those happened in the two  
20 minutes that are documented on the police report?

21 THE COURT: I think his testimony was from the time  
22 he entered with the young lady until there was an  
23 identification took two minutes.

24 BY MR. KANOVITZ:

25 Q. The procedure, sir, is to have them sign and put the time

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1       on the showup instructions and then to flip over the photo  
2       array so that they can now see it, correct?

3       **A.**     That is what happens, yes.

4       **Q.**     I mean, that's your procedure, right?

5       **A.**     Yes.

6       **Q.**     So the time that they put on the instructions is the time  
7       right before you flip over the array, correct?

8       **A.**     That is correct.

9       **Q.**     Okay. And then after they pick someone out, you put the  
10      time when they pick the person out, right?

11      **A.**     I believe that is on there, yes.

12      **Q.**     No, no. I'm saying, that's the practice. That's what  
13      you do.

14      **A.**     Yes.

15      **Q.**     Okay. And C.W. signed the form at 6:20 p.m., correct?

16      **A.**     Without seeing the form, I don't know what time it was.  
17      I know it was a short period of time.

18      **Q.**     Okay. Would you like to see the form?

19      **A.**     Sure.

20                    MR. KANOVITZ: Your Honor, could we publish  
21      Plaintiff's Exhibit 58 at page 1.

22                    MR. McLANDRICH: If it's the form, I don't have any  
23      objection.

24                    THE COURT: Any?

25                    MS. FRICK: No.

1                   THE COURT: It may be.

2                   (Exhibit displayed.)

3                   MR. KANOVITZ: If you could just focus at the --  
4 yes.

5 BY MR. KANOVITZ:

6 Q. Okay. Does that refresh your recollection that C.W. put  
7 the time down at 6:20 p.m.?

8 A. That's what time she put it down, yes.

9 Q. And that's her handwriting, not your handwriting,  
10 correct?

11 A. That's correct.

12 Q. Okay. And then you document the time that she made the  
13 identification, correct?

14 A. I believe that's on another form.

15 Q. But you do document that time, right?

16 A. Yes.

17 Q. And isn't it true that you documented that the  
18 identification occurred at 6:22?

19 A. I believe that's accurate.

20 Q. Okay. And that's recorded in your handwriting, right?

21 A. I would have to see the document.

22 Q. Okay.

23 A. I believe that it is.

24 Q. Okay. Do you want to see the document?

25 A. Yes. These are all prescribed documents that we use

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1 through Miami Township.

2 MR. KANOVITZ: Could we show page 2 of Plaintiff's  
3 58, please.

4 (Exhibit displayed.)

5 BY MR. KANOVITZ:

6 Q. All right, sir. Now, we are looking at the bottom of the  
7 form here. And 1822 hours, that's your handwriting, correct?

8 A. That's correct.

9 MR. KANOVITZ: You can take it down.

10 BY MR. KANOVITZ:

11 Q. So the time between when you flipped over the photo array  
12 and the time that she made an identification is two minutes?

13 A. I think that I had said that before.

14 Q. Okay. So you agree with me then?

15 A. Yes.

16 Q. And would you also agree with me that during those two  
17 minutes she was looking back and forth between several of the  
18 photos?

19 A. Yes.

20 Q. And you watch her demeanor during those two minutes,  
21 right?

22 A. Yeah. Her eyes became watery.

23 Q. My question is, you watched her demeanor?

24 A. That is part of her demeanor, but, yes.

25 Q. And where her eyes are looking?

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1 A. I seen that she was tracking, yes.

2 Q. And would you also agree that two minutes is a very long  
3 time to take before recognizing someone?

4       A. The whole time was not spent looking at that photo  
5       lineup. You're sitting here -- we had to go through the  
6       process of reading the documents, have them signed and  
7       dated. The whole time is not spent just viewing that  
8       lineup.

9 Q. Sir, I thought we just agreed that between the time you  
10 flipped over the array and the time that she made an  
11 identification was two minutes, correct?

12 A. That is the full time from reading and viewing and  
13 ending, yes.

14 Q. So -- all right. You're saying -- so let's go back to my  
15 question without regard to what you are saying -- strike that.

16           Would you agree that two minutes is a very long time to  
17 take to recognize someone?

18 A. Again, I do not believe that the whole two minutes is  
19 used looking at that photo lineup at that time. You have  
20 other processes in there that also take up time.

21 Q. That's not my question. My question is, do you agree  
22 that two minutes is a very long time to take to recognize  
23 someone?

24 MR. McLANDRICH: Objection.

25 THE COURT: Well, it's a simple -- it's a simple

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1 question. Do you believe that two minutes, if you were  
2 looking at pictures, would be a long time to identify someone.  
3 If you do, you do; if you don't, you don't.

4 THE WITNESS: If we're talking in general, yes. But  
5 if you're trying to apply it to this incident here, no,  
6 because there were other factors.

7 THE COURT: All right. Next question.

8 BY MR. KANOVITZ:

9 Q. At a certain point in time after watching her and  
10 observing her demeanor, you decided to read to her a very  
11 specific question from the sign-up instructions, correct?

12 A. Well, that -- I believe the statement was actually read  
13 prior to showing the photo lineup. The first wording I  
14 believe was.

15 Q. What do you mean "the first wording was"?

16 A. Well, there is different statements in there, and I  
17 know in the report they are kind of run together.

18 I had made a statement prior to the photo lineup, and I  
19 don't remember the exact words right now, but I had made a  
20 statement to her that I wanted her to be basically 100  
21 percent sure if she did make an identification.

22 Q. Sir, you -- after watching her struggle, you read her the  
23 sentence --

24 MR. McLANDRICH: Objection.

25 THE COURT: What is this? Is this a question, or

1 are you reading a statement?

2 MR. KANOVITZ: No. This is a question.

3 THE COURT: Okay. With regard to?

4 MR. KANOVITZ: What he said to her during the photo  
5 array.

6 THE COURT: Well, what you should do is -- let's ask  
7 him again whether or not he read a statement during -- while  
8 she was looking at a photo array, and then if he remembers,  
9 whatever you have there.

10 BY MR. KANOVITZ:

11 Q. While she was looking at the pictures, did you read her a  
12 sentence from the photo showup instructions?

13 A. I don't remember whether I did that or not.

14 Q. Okay, sir. Do you recall testifying at a grand jury  
15 proceeding to try to get an indictment of Mr. Gillispie?

16 A. I remember testifying at grand jury, yes.

17 Q. And you would have been under oath at that time?

18 A. Yes.

19 Q. And did you say the following:

20 "She narrowed it down to one person, and due to me using  
21 the term '100 percent positive' she became hesitant. So I  
22 went ahead and I read her the question 'Do any of the people  
23 in this lineup look similar and like?' and she said that she  
24 had picked somebody out," right?

25 A. I believe that is how that went, yes.

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1       **Q.**     And when you said that you read her the question, you  
2                  were -- that was -- you were using shorthand for a specific  
3                  question that the instructions tell you to read, correct?

4       **A.**     Yes. There is a one-liner at the bottom of the  
5                  photographic lineup instructions.

6       **Q.**     And that sentence is -- and, actually, the instructions  
7                  tell you to read that sentence if a witness cannot make an  
8                  identification, correct?

9       **A.**     Yes.

10      **Q.**     And the sentence says, "Do any of the persons shown in  
11                  the photographs resemble the person you saw?"

12      **A.**     That is what it says.

13      **Q.**     And that's when she picked out Mr. Gillispie, correct?

14      **A.**     Well, yes.

15      **Q.**     By the way, you never told C.W. that she didn't have to  
16                  pick someone out, correct?

17      **A.**     No.

18      **Q.**     Now, after you were finished with C.W., you needed to  
19                  show the array to B.W., right?

20      **A.**     B.W. came after C.W., yes, on July 17.

21      **Q.**     Please answer my question. After you showed it to C.W.,  
22                  you needed to show it to B.W.?

23      **A.**     Yes.

24      **Q.**     And B.W. was scheduled to come in on Saturday.

25      **A.**     I don't think that that's how that went, that she was

1 supposed to come in on Saturday. I think that I had been  
2 told by her -- by C.W. that she wouldn't be able to come in  
3 till Saturday. But I know that they ended up showing up at  
4 the police department on July 17.

5 Q. So you asked C.W. when her sister was going to come, and  
6 she said, "My sister is planning to come on Saturday," fair?

7 A. Yeah. I think I just said that, yes.

8 Q. Okay. But then -- and this was on Monday, the 16th, at  
9 approximately 6:15 p.m. I'm sorry -- yeah, 6:15 p.m.

10 A. That would have been, I believe -- is it C.W.?

11 Q. C.W., yeah.

12 A. Yeah.

13 Q. That's when C.W. told you that B.W. was going to come on  
14 Saturday.

15 A. Yes.

16 Q. And then the next morning, on Tuesday, at 10:45, C.W.  
17 shows up with B.W., right?

18 A. On the 17th, yes.

19 Q. So, you know, middle of the next morning, much sooner  
20 than Saturday?

21 A. I -- I believe it was around 1100 hours.

22 Q. And you had given C.W. the opportunity to talk to B.W.  
23 before B.W. saw the photo array, right?

24 A. She had specifically been told not to talk about the  
25 lineup to her sister.

1       **Q.**     You gave her the opportunity to talk to her sister before  
2     she viewed the photo array, correct?

3       **A.**     I believe that that would be an assumption that that  
4     would even happen. But the answer to the question itself  
5     is, yes, there would have been a possibility.

6       **Q.**     And to your point about assumption, did you assume that  
7     sisters are likely to talk to each other or not likely to talk  
8     to each other?

9       **A.**     She was given specific instructions not to talk about  
10    the lineup.

11      **Q.**     Now, you could have scheduled B.W. and C.W. for the same  
12    day, correct?

13      **A.**     I think that there was something about one or the other  
14    working, and I'm not sure which one it was at the time. I'm  
15    not sure how that all played out.

16                  I don't remember that. We're dealing 30 years ago.

17      **Q.**     At some point in time, though, there would have been a  
18    day where they were both not working, correct?

19      **A.**     I would assume that, yes.

20      **Q.**     And, of course, B.W. was able to come down together with  
21    C.W. on Tuesday morning?

22      **A.**     I would agree with that.

23      **Q.**     So you could have scheduled the two of them to come to  
24    the police station at the same time?

25      **A.**     I don't remember exactly what the issue was as to why

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1       they couldn't come at the same time.

2       **Q.**     That's not my question. You could have scheduled them to  
3       come at the same time?

4       **A.**     Well, you could have.

5       **Q.**     You chose not to?

6       **A.**     It's choices that I made.

7       **Q.**     Now, after B.W. had gone through the photo array with  
8       you, you brought B.W. and C.W. together in a room, right?

9       **A.**     After the fact, yes.

10      **Q.**     And you gave them feedback about the pictures, correct?

11      **A.**     I believe we discussed it.

12      **Q.**     You told them, "You picked out the guy that I suspected."

13      **A.**     I don't know what the wording was and what specifically  
14       was said. I do know that there was a conversation between  
15       all three of us.

16      **Q.**     It was words to the effect that they picked out the  
17       person you suspected, correct?

18      **A.**     Yes.

19      **Q.**     And you actually gave them Mr. Gillispie's last name?

20      **A.**     I believe that -- I don't actually remember that  
21       independently, but I believe that that is a possibility.

22      **Q.**     And you told them they verified that Mr. Gillispie was  
23       the perpetrator?

24      **A.**     I don't know if that's the exact same words, but I did  
25       let them know they both had identified the same individual.

1       **Q.**     You used the term "verified," correct?

2       **A.**     Without seeing that, I don't know. It's 30 years  
3                   later. I don't know what the exact wording is.

4       **Q.**     Okay. Sir, you were there at plaintiff's second trial,  
5                   correct?

6       **A.**     Yes, sir.

7                   MR. KANOVITZ: Counsel, this is page 306 of the  
8                   transcript, and it's page 51 of Plaintiff's Exhibit 59.

9                   THE COURT: I assume this is being read as  
10                  impeachment?

11                  MR. KANOVITZ: Yes, yes.

12                  BY MR. KANOVITZ:

13       **Q.**     Sir, why --

14                  MR. KANOVITZ: Counsel, you ready?

15                  MR. McLANDRICH: I mean, my computer's frozen.

16                  MR. KANOVITZ: Here, I can just show you.

17                  THE COURT: Counsel, why don't you just read it.

18                  BY MR. KANOVITZ:

19       **Q.**     Sir, were you asked these questions and did you give  
20                  these answers:

21                  "Question: So you told them that their identification  
22                  verified what you thought?"

23                  "Answer: Yes. When you say the word 'verified,' I  
24                  remember saying that."

25                  Were you asked those questions, and did you give those

1 answers?

2 A. I evidently did say that. It's on the transcript.

3 Q. Okay. Did either B.W. or C.W. talk to you about the fact  
4 that the man's face was partially masked by the sunglasses?

5 A. I don't remember us having that discussion.

6 Q. Did either of them tell you, you know, it's hard to be  
7 certain because he was wearing sunglasses?

8 A. I don't remember them ever saying that.

9 Q. Did you ask them about why they decided to pick  
10 Mr. Gillispie?

11 A. I think there were some statements which would have  
12 been put at the bottom of the fact sheet.

13 Q. Fair enough. So the statements that you wrote down for  
14 C.W. were that "His face is full. The hair looks the same,"  
15 right?

16 A. I think I remember reading that, yes.

17 Q. Well, you wrote it down, right?

18 A. Yeah. I mean, without seeing the document, but I am  
19 pretty sure that I would be the one that writes it down.

20 Q. And for B.W., all you wrote down is "It's him, Number 6,"  
21 right?

22 A. Yes.

23 Q. And so by the time B.W. had arrived, her sister had  
24 already seen the picture of Mr. Gillispie with the face blown  
25 up and the golden background, right?

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1                   MR. McLANDRICH: Objection.

2                   THE COURT: I think that's already been asked and  
3 answered.

4                   MR. KANOVITZ: Okay.

5                   This would be a good time to stop.

6                   THE COURT: Ladies and gentlemen, we are going to  
7 recess for the lunch hour. We will reconvene right around  
8 1:15. Please remember the Court's admonitions: Don't discuss  
9 the case amongst yourselves or with anyone else.

10                  A little change, folks. You are going to -- supposedly,  
11 we need you to go to the grand jury room during the lunch  
12 hour, or that will be your gathering place. They will lead  
13 you down there. Supposedly, we have got some things going on.  
14 Some kind of installation is going on in the other room. So  
15 we'll lead you to the right place.

16                  THE COURTROOM DEPUTY: All rise. This court stands  
17 in recess.

18                  (Jury out at 11:56 a.m.)

19                  (Recess at 11:56 a.m.)

20                  (Jury in at 1:22 p.m.)

21                  (In open court at 1:22 p.m.)

22                  THE COURT: Counsel approach.

23                  (At sidebar off the record.)

24                  THE COURT: Ladies and gentlemen, welcome back.

25                  We are back on the record.

1                   Counsel ready to proceed?

2                   MR. KANOVITZ: Yes.

3                   MR. McLANDRICH: Yes, sir.

4                   MS. FRICK: Yes, sir.

5                   THE COURT: You may.

6                   MR. KANOVITZ: Thank you.

7 BY MR. KANOVITZ:

8                  **Q.** Sir, when we broke, we were talking about the time when  
9 you showed the photo array first to C.W. and then to B.W. Do  
10 you recall that?

11                 **A.** Yes, sir.

12                 **Q.** Okay. And I just want to clarify something on the  
13 timing. C.W. came and saw the photo array on July 16, 1990,  
14 in the evening, right?

15                 **A.** I believe that's correct, yes.

16                 **Q.** And at that time, B.W. was scheduled to come on the  
17 following Saturday, right?

18                 **A.** I know there is statements concerning Saturday. I  
19 don't know how that came about or whether it was -- I think  
20 that's when C.W. told me that B.W. would probably be coming,  
21 Saturday.

22                 **Q.** Okay. So on the 6 -- on July 16th, the expectation was  
23 that B.W. would not be coming to the police station until  
24 Saturday?

25                 **A.** Yes.

1       Q.     Okay. And then she showed up the following morning,  
2 which was Tuesday, July 17th?

3       A.     Yes. So I think it was around 1100 hours, 1107,  
4 something like that in there.

5       Q.     Now, let's talk about showing the photo array to S.C.

6                  We previously covered that by the time you showed the  
7 photo array to S.C., you already have the Polaroids that you  
8 took of Dean while he was at the police station, right?

9       A.     Yes.

10      Q.     Okay. And, essentially, six weeks passed from the time  
11 when you showed the photo array to B.W. until you showed it to  
12 S.C., correct?

13      A.     I believe so, yes. That's about right.

14      Q.     Okay. And when you showed it to S.C., you were wanting  
15 her to strengthen your case, correct?

16      A.     I was trying to corroborate my case, yes.

17      Q.     Okay. Well, to actually strengthen your case, correct?

18                  MR. McLANDRICH: Objection.

19                  THE COURT: He's answered the question.

20                  I mean, was it to strengthen your case?

21                  THE WITNESS: It was to strengthen but also  
22 corroborate.

23                  THE COURT: Okay.

24          BY MR. KANOVITZ:

25      Q.     And C.W. and B.W., when they observed the perpetrator,

1       his face was partially masked with the sunglasses, right?

2       **A.**     He had sunglasses on.

3       **Q.**     And with S.C. there was no sunglasses, right?

4       **A.**     That's correct.

5       **Q.**     So an identification by S.C. would strengthen your case  
6                   against Dean, correct?

7       **A.**     Well, I wasn't looking at that at that time, but, yeah.

8       **Q.**     Well, that was one of the -- one of the concerns you had  
9                   when you went into the photo array with S.C., right?

10      **A.**     I wouldn't say that I had a concern at that time,  
11                   because as far as I was concerned, the victims in this case,  
12                   when they were looking at the lineup, they are going to be  
13                   looking at the face.

14                  You know, I know we keep going over the sunglasses as  
15                   being a mask. I think she even said glasses could be a  
16                   mask. So based on her statement, anybody who is wearing  
17                   glasses is wearing a mask.

18      **Q.**     Okay. Another reason why you want -- you wanted S.C. to  
19                   confirm was because when two years had past, it causes doubts,  
20                   right?

21      **A.**     Repeat that question.

22      **Q.**     Another reason why you wanted S.C. to confirm B.W. and  
23                   C.W. is because when two years had past, it causes doubts?

24      **A.**     Well, I don't -- someone who goes through a traumatic  
25                   experience like that --

1                   THE COURT: Detective, Detective, what I think is  
2 being asked is what were your feelings at that point in time.  
3 He's asking you what your feelings are.

4                   THE WITNESS: And I --

5                   THE COURT: And your feelings are only your  
6 feelings. You don't have to adopt questions or anything. You  
7 just tell him what your feelings are.

8                   THE WITNESS: Okay.

9                   THE COURT: If you had any feelings.

10                  THE WITNESS: At this time, I don't independently  
11 remember whether -- what I felt.

12 BY MR. KANOVITZ:

13 Q. Okay. This is from your deposition of November 6, 2018,  
14 pages 208 -- page 208, line 15.

15 MR. McLANDRICH: Exhibit?

16 MR. KANOVITZ: It is PX153. And that will be 208,  
17 line 15, to 209 --

18 MR. McLANDRICH: 153? That's not what I see.

19 MR. KANOVITZ: I'm sorry. Yes, it's PX153.

20 MR. McLANDRICH: Thank you. I'm sorry. Page again?

21 MR. KANOVITZ: 208, line 15, through 209, line 11.

22 MR. McLANDRICH: Okay, I'm with you. Go ahead.

23 BY MR. KANOVITZ:

24 Q. Okay. Were you asked these questions and did you give  
25 these answers:

1           "Question: One of the things that happened here --"

2           MR. KANOVITZ: Are you ready to display?

3           (Exhibit displayed.)

4 BY MR. KANOVITZ:

5 Q.       "Question: One of the things that happened here with the  
6 photo lineups that you conducted was that they were just under  
7 two years after the original incident, correct?"

8       "Answer: Correct."

9       "Was that an issue of concern for you in administering  
10 the lineups?"

11      Then there is an objection.

12      Then you answer, "Okay. Was it an issue? You always  
13 have doubts when you do a lineup that has a period of time  
14 from an offense to the time the identification is made, which  
15 is also one of the reasons why I ended up going back to -- or  
16 going to see S.C. was to pack up the existing case that I have  
17 on Connie and Bonnie."

18      Were you asked those questions; did you give those  
19 answers?

20 A.       Yes, sir. I was just telling you, I don't  
21 independently remember that at this time.

22 Q.       But you would agree that it's an issue of concern when  
23 two years have passed?

24 A.       I think that any time you have a space of time -- my  
25 objective, though, at that time was to corroborate the

1       victims in my case versus the other case. And her also  
2       being someone that is not related to the other victim in the  
3       case.

4       **Q.**     And so you were in hopes that S.C. would pick Dean from  
5       the lineup, correct?

6                    MR. McLANDRICH: Objection.

7                    THE COURT: Sustained.

8       BY MR. KANOVITZ:

9       **Q.**     It's been sustained. You don't have to answer.

10                  Your hope in building your investigation was that S.C.  
11       would corroborate B.W. and C.W.?

12       **A.**     I don't know that the word "hope" was during that  
13       period of time. I know that that was initially used on the  
14       other one. But, yes, I wanted S.C. to view the photo lineup  
15       and see if she could make an identification in order to  
16       bolster my case involving C.W. and B.W.

17       **Q.**     And without regard to when you said the word "hope," I am  
18       asking you, it is, in fact, the case that you were hoping she  
19       would pick Dean, correct?

20                    MR. McLANDRICH: Objection.

21                    THE WITNESS: I --

22                    THE COURT: Sustained.

23       BY MR. KANOVITZ:

24       **Q.**     Okay. Because Sandra saw the man without the sunglasses  
25       on, she was able to see the color of his eyes, correct?

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1 A. I believe so, yes.

**Q.** And she had given a description of eye color, right?

3 A. I think she said blue.

4 Q. Yes.

5 MR. KANOVITZ: Could we have the photo array back  
6 up.

7 (Exhibit displayed.)

8 BY MR. KANOVITZ:

9 Q. Okay, sir. Looking at the photo array, it's pretty clear  
10 that Number 4, Mr. DePetrio, Detective DePetrio, has brown  
11 eyes, correct?

**A.** Based on the photo, it appears that way.

13 Q. And that's how it would have appeared to S.C. when you  
14 were presenting it, correct?

15 A. Yes, sir.

16 Q. Number 5, brown eyes?

17 A. Yes. When we were blowing it up and making it a little  
18 bit bigger, yeah.

19 Q. Well, sir, when you look at it at the size of the photo  
20 array, he clearly has brown eyes, does he not?

21 A. Well, yes.

22 Q. Okay. And 2 clearly has brown eyes.

1           I'm sorry. Go ahead. There was a picture up -- the  
2 cameras take pictures of people, and there was a picture up in  
3 front of my --

4 BY MR. KANOVITZ:

5 Q. And Number 2, when you look at it, clearly has brown  
6 eyes?

7 A. I guess it appears that way, yeah.

8 Q. Number 3, it's a little harder to tell, but they're  
9 brown, right?

10 A. Actually, Number 2 is kind of harder to tell.

11           MR. KANOVITZ: Could you zoom in.

12           THE WITNESS: His is also --

13 BY MR. KANOVITZ:

14 Q. 2's got brown eyes.

15           THE COURT: Is that a question?

16           MR. KANOVITZ: Yes. Sorry, Your Honor.

17           THE WITNESS: Actually, I'm seeing -- I'm not sure  
18 I'm seeing -- I think I'm seeing blue around his eyes. Again,  
19 it all comes to the camera angles and stuff like that on the  
20 pictures.

21 BY MR. KANOVITZ:

22 Q. Okay. So it's your testimony that Number 2 looks blue to  
23 you?

24 A. No. It's Number 3 that we were talking about.

25 Q. I'm sorry. You're right.

1           So when you look hard, it's hard to tell, but they might  
2 be blue, they might be brown; is that fair to say?

3   **A.**   Yeah. I mean, even with the blowup, it's hard to tell.

4   **Q.**   Now, Number 1, though, looks like blue eyes, right?

5   **A.**   Yes.

6   **Q.**   And then Dean very clearly has blue eyes?

7   **A.**   Dean has blue eyes, or appears to be blue, yes.

8   **Q.**   Now -- and that's how it would have appeared at the time  
9 you presented it to S.C., correct?

10   **A.**   Yes.

11   **Q.**   Okay. Now, when you showed it to S.C., she looked at the  
12 photo array for a bit, and then she said she wanted to look at  
13 it in better light, correct?

14   **A.**   That's correct.

15   **Q.**   And so she took it outside so that she had better light?

16   **A.**   That's correct.

17   **Q.**   And once she had better light, she looked at it for a  
18 little bit longer. Yes?

19   **A.**   Yes.

20   **Q.**   And at that point, she picked Dean, correct?

21   **A.**   Actually, she was already identifying Roger in the  
22 house.

23   **Q.**   Well, she certainly wanted to go outside and see the  
24 picture in the light, right?

25   **A.**   That's because she wanted to get an even better look,

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1       but, yes, she was already identifying him in the house. She  
2       requested more light and suggested that we go outside on the  
3       porch.

4       **Q.**      Well, she didn't tell you what feature it was of his that  
5       she wanted to look at in better light, did she?

6       **A.**      No. She just wanted to look at the picture in higher  
7       light.

8       **Q.**      Now, switching topics, after you completed these  
9       procedures where you showed the photo lineup to the three  
10       victims, there came a time where they had to come to court,  
11       right?

12       **A.**      There was a time, yes.

13       **Q.**      And the court identification procedure is more formal  
14       than when you were sitting with them with the photo array,  
15       right?

16       **A.**      I'm not sure I understand that question.

17       **Q.**      Well, they are under oath, right?

18       **A.**      Yes.

19       **Q.**      There is a -- there's attorney's there. There's a judge  
20       there. That's what I mean.

21       **A.**      Yes.

22       **Q.**      And you're not able to sit by them while they make an  
23       identification, right?

24       **A.**      That would be correct.

25       **Q.**      Okay. And you knew that once it was in court, they were

1 going to be asked questions about how certain they were of the  
2 identification that they picked. Yes?

3 A. Prior to, I didn't know what was actually going to be  
4 asked of them. I would probably think that that might be  
5 what was asked.

6 Q. That was your expectation?

7 A. It was what I thought might be asked, yes.

8 Q. Okay. And so you thought that Dean's lawyers might want  
9 to ask about the fact that they described the hair as  
10 blondish?

11 MR. McLANDRICH: Objection.

12 THE COURT: I'm assuming that -- do you have  
13 previous testimony? I mean, you are asking him specific  
14 questions with regard to the description. You haven't asked  
15 him what generally he expected.

16 I will let you go ahead with this, but -- go ahead and  
17 ask the question.

18 MR. KANOVITZ: Thank you.

19 BY MR. KANOVITZ:

20 Q. Was it your expectation that Dean's lawyers would ask the  
21 women about the identification that they had made at the time  
22 in question? I'm sorry. About the description they had given  
23 of the perpetrator at the time of the events in question?

24 A. I knew that was a possibility.

25 Q. And so you knew, for example, they might be asked about

1 his hair color?

2 A. I didn't know what they would ask, but I do know that  
3 they would most likely do something like that, yes.

4 Q. Okay. And you met with the women before they got on the  
5 stand?

6 A. I can't remember whether I specifically did or whether  
7 the prosecutor did.

8 Q. Well, isn't it true you talked to them before they got on  
9 the stand and you told them you believed that Dean had  
10 purposely changed his appearance?

11 A. I think that there was a statement about that. It had  
12 to do with the fact that between 8-8 and I believe 9-5, that  
13 the hair had been cut and that it was appearing different to  
14 me, or something like that. I know that there was a  
15 statement.

16 Q. And the statement was, you were telling them, hey, before  
17 you get on the stand, I just want you to know that I believe  
18 Dean had changed his appearance?

19 A. I don't remember if that was directly the wording, but  
20 if you just read that, I would have to say that it is.

21 Q. Okay. So this is Plaintiff's Exhibit 3, 199, 19?

22 THE COURT: And, Counsel, from now on, if you are  
23 going to do that, you need to ask him whether he remembers  
24 making a statement. If he doesn't remember making a  
25 statement, then you can make everyone's reference and bring

1           those things to his attention.

2           MR. KANOVITZ: Okay.

3           THE COURT: All right?

4           MR. KANOVITZ: Fair enough. Thanks, Judge.

5 BY MR. KANOVITZ:

6 Q. So do you recall testifying at plaintiff's first --

7 Mr. Gillispie's first criminal trial that you told the three  
8 victims that you believed the victim -- you believed that Dean  
9 had died his hair?

10 A. I know that there was some discussion --

11 THE COURT: That's a yes or no. Did you do that?

12 THE WITNESS: I don't -- I mean, I -- I do know that  
13 there was something that had been made. I don't know the  
14 context of it.

15 BY MR. KANOVITZ:

16 Q. Well, putting aside the context, the gist of it was you  
17 were telling them you believed Dean had died his hair?

18 A. I don't know if that was specific like that.

19 Q. Okay.

20 MR. KANOVITZ: Your Honor, I'd like to read this  
21 portion of his testimony as an admission by a party opponent.

22 THE COURT: Is this an impeachment?

23 MR. KANOVITZ: Rather than doing impeaching, I'd  
24 like to admit the admission that he made. I'd like to offer  
25 the admission that he made.

1                   THE COURT: Counsel?

2                   MR. McLANDRICH: He's -- I don't think that's  
3 appropriate. He's here. He can ask him the question. He can  
4 impeach him.

5                   THE COURT: Ask him the question. If he doesn't --  
6 then ask him whether or not he made that statement.

7 BY MR. KANOVITZ:

8 Q. Okay. Sir, did you tell the three women before they got  
9 on the stand that they could expect to see Dean in the  
10 courtroom?

11 A. That would have been either me or the prosecutor. I  
12 don't know who would have been talking to them at the time.

13 Q. Okay. This is 199, questions -- lines 1 through 5.

14 MR. McLANDRICH: Is this the criminal trial?

15 THE COURT: Now, for the record, you are making  
16 reference to what document?

17 MR. KANOVITZ: Plaintiff's Exhibit 3, which is the  
18 first criminal trial. I'm sorry. Which is the -- yeah, first  
19 criminal trial.

20 (Exhibit displayed.)

21 BY MR. KANOVITZ:

22 Q. Sir, were you asked these questions, and did you give  
23 these answers:

24 "Question: You told them that they could expect to see  
25 Dean in the courtroom, right?"

1           "Answer: I explained to them the procedures that they  
2 would have go through if they chose to pursue it through  
3 court."

4           And you are referring to yourself and not the prosecutor  
5 there, right?

6       A. This -- this part seems like this was something had  
7 been said prior to. I'm not -- I don't know that it was at  
8 that hearing. That seems like something that I had -- when  
9 I was going through my report, that I had seen.

10     Q. We're missing each other. So let me try to make it  
11 clear.

12           Before they got on the stand, in court, you had a  
13 conversation with them, right? And I'm not saying you had  
14 that before you testified, like immediately before you  
15 testified at the trial. I'm saying before they first took the  
16 stand in a court.

17     A. I don't independently remember that.

18     Q. Okay.

19           MR. KANOVITZ: Your Honor, based upon his lack of  
20 recollection, may I offer his admission?

21           THE COURT: Why aren't you going to cross-examine  
22 him with regard to it? I mean, are you meaning to admit this  
23 statement that he made?

24           MR. KANOVITZ: Well, yes. Several question and  
25 answers beyond this as well.

1                   THE COURT: Well, I don't know what any of that is  
2 at this point in time.

3                   MR. KANOVITZ: Okay. Fair enough.

4 BY MR. KANOVITZ:

5 Q. After you were asked that question, isn't it true that  
6 you were asked if you told them that Dean had tried to change  
7 his appearance, right?

8                   MR. McLANDRICH: Could we approach, Your Honor?

9                   THE COURT: Yeah, let's approach.

10                  (At sidebar.)

11                  MR. KANOVITZ: I'm sorry if I'm missing. I brought  
12 the three questions and answers. I don't know how to do it by  
13 impeachment if he says "I don't remember." Do I impeach him  
14 just from the recollection?

15                  THE COURT: Yes.

16                  MR. KANOVITZ: I am sorry. I didn't understand.

17                  MR. McLANDRICH: Here's the issue I want to raise.  
18 When you say the criminal trial, it gives the impression to  
19 this jury that those things were said in the presence of the  
20 criminal trial jury and potentially swaying them during the  
21 criminal trial, when these things are from the suppression  
22 hearing.

23                  MR. KANOVITZ: This testimony is during the criminal  
24 trial. The time that he said it to them he claims is right  
25 before the suppression hearing, but his testimony here, this

1 is the criminal trial.

2 THE COURT: So let's don't refer to -- you can refer  
3 to the fact that you have -- was he in court on this date and  
4 da, da, da, and did he testify. You don't need to refer to it  
5 as a criminal trial. You don't need to refer to that.

6 Ask him whether he said that or remembers saying that.  
7 If he says not, then bring it up and say, in this trial, in  
8 this transcript --

9 MR. KANOVITZ: Okay.

10 THE COURT: -- this is you.

11 MR. KANOVITZ: Thank you.

12 MR. McLANDRICH: I think that's proper.

13 THE COURT: I assume that's -- okay.

14 MR. KANOVITZ: Thank you, Judge.

15 (In open court.)

16 THE COURT: All right. The Court's sustaining the  
17 objection to the extent that the parameters that I gave you.

18 MR. KANOVITZ: Understood. May I proceed?

19 THE COURT: You may.

20 MR. KANOVITZ: Thank you.

21 BY MR. KANOVITZ:

22 Q. Okay. Sir, do you recall being under oath in court and  
23 testifying about what it is that you said to the three women  
24 about Mr. Gillispie's appearance?

25 THE COURT: Counsel, let's have a specific time, an

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1 event for that.

2 BY MR. KANOVITZ:

3 Q. On February 5th of 1991.

4 A. During the first trial?

5 Q. Correct. And were you asked these questions and did you  
6 give these answers? This is 199, lines 1 through 17.

7 "Question --"

8 MR. McLANDRICH: I thought first you were going to  
9 ask him if he remembered saying it.

10 THE COURT: Right.

11 BY MR. KANOVITZ:

12 Q. Do you remember at that proceeding testifying about a  
13 conversation that you had with the three women?

14 A. I do not independently remember that.

15 MR. KANOVITZ: May I proceed?

16 BY MR. KANOVITZ:

17 Q. Okay. Sir, were you asked these questions and did you  
18 give these answers:

19 "Question: You also told them that they could expect to  
20 see Dean in the courtroom, right?"

21 "Answer: I explained to them the procedures that they  
22 would have to go through if they chose to pursue it through  
23 court."

24 "Question: And you told them that Dean had tried to  
25 change his appearance, didn't you?"

1           "Answer: Yes, sir, I did. That's later on, of course."

2           "Question: And did you in preparation for their  
3 testimony in the courtroom, right?"

4           I'm sorry. "Question: And you did that in preparation  
5 for their testimony in the courtroom, right?"

6           And there were some objections.

7           And then you answer, "I wanted them to know that his  
8 appearance had changed, yes. That he made attempts to change  
9 his appearance."

10          Were you asked those questions, and did you give those  
11 answers?

12          **A.** Based on that, what you are reading, I would have to  
13 say yes.

14          **Q.** Okay. So, now, when you told them before they got on the  
15 stand that you believed he changed his appearance, that is  
16 what you genuinely believed, right?

17          **A.** I'm still kind of confused on the point of that  
18 statement you are saying is on the first trial, or if that  
19 was the statement that was made to them during one of the  
20 other hearings, because it's --

21          **Q.** Two statements. So you made a statement to them before  
22 they got on the stand at one of the other hearings. And then  
23 what I just read to you was your testimony about making that  
24 statement that you gave at the first trial. Understood?

25          **A.** Okay, yes. And, yes.

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1       **Q.**     Yes is the answer? Okay.

2                  Now, you had no basis to know whether he had changed his  
3                  appearance or not, correct?

4       **A.**     Other than observation.

5       **Q.**     Well, at what point in time did you personally observe  
6                  him in that he looked any different than he did at trial?

7       **A.**     Well, see, I'm looking at the statement, and for me it  
8                  seems like that was the period of time between 8-8 of '90  
9                  and 9-5 of '90. And that's why I'm kind of getting confused  
10                 in there, because I know that there was something said  
11                 during that period of time. So I'm getting kind of confused  
12                 on times.

13                  I know that you are saying that this is in the first  
14                 trial and that these statements are being made --

15       **Q.**     I think I -- I think I understand what you are saying  
16                 right now. And so my question is, are you claiming that when  
17                 you told them he changed his appearance, all you were  
18                 trying -- all you were saying to them, in fact, was he changed  
19                 his appearance after the photo array and before you saw him in  
20                 court?

21       **A.**     I personally don't remember what the reasoning is  
22                 behind it.

23       **Q.**     Okay.

24       **A.**     That's why I'm just -- I'm confused about periods of  
25                 time.

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1       **Q.**     So you could have -- you could have investigated whether  
2     Dean's appearance at the time of the events in question was  
3     the same as his appearance at the time that the women first  
4     took the stand in court, correct?

5       **A.**     We can sit here and talk about woulda, shoulda,  
6     coulda --

7                  THE COURT: No, no, no, no, no. The question is,  
8     you could have investigated between the time the women --

9                  MR. KANOVITZ: Of the events in question.

10                 THE COURT: The events in question and when?

11                 MR. KANOVITZ: When they saw him in court.

12                 THE COURT: Did you investigate that?

13                 THE WITNESS: I did not.

14                 THE COURT: His appearance.

15                 THE WITNESS: No.

16     BY MR. KANOVITZ:

17        **Q.**     And you had options available to you to investigate that  
18     before you told the women that he had changed his appearance,  
19     correct?

20        **A.**     I don't know what options those would be.

21        **Q.**     Well, you could have gone to people at GM where Dean  
22     worked at the time of the events in question and asked them  
23     what was his appearance like in August of 1988, correct?

24        **A.**     Well, that would be assuming that I knew someone at GM  
25     that I could go to and ask that specific question. It also

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1 would assume that the employees are the same at that time.

2 I would have to know somebody to go to.

3 Q. Well, you had a contact over at GM, right?

**A.** The person that ended up bringing us the IDs.

5 Q. Mr. Wolfe --

6 A. Yes.

7 Q. -- the guy that was in charge of the security department,  
8 right?

9 A. That's correct.

10 Q. And you called him a couple times during the course of  
11 your investigation, right?

12 A. We had conversations, yes.

13 Q. So isn't it true that you could have called up Mr. Wolfe  
14 and said, "Hey, I need to know what Dean's appearance was like  
15 in August of 1988"?

16 A. We're sitting here talking about a coulda, and the  
17 coulda is --

18 Q. That's the question, could you have?

19 A. Yes.

20 Q. And you did not?

21 | A. And --

THE COURT: That's been asked and answered.

23 BY MR. KANOVITZ:

24 Q. All right, sir. I want to talk to you about some  
25 potentially missing documents.

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1           We previously talked about the fact that when you were  
2 assigned the case you received the complete file, right?

3       **A.**    I received the file from Steve Fritz.

4       **Q.**    You used the term "complete file" when you testified,  
5 right?

6       **A.**    I guess so, yes.

7       **Q.**    And we talked about the fact that whatever it was that  
8 Fritz and Bailey had written at that point you would have had  
9 possession of, correct?

10      **A.**    Everything that I was given, yes.

11      **Q.**    Okay. Now, another set of documents that were at issue  
12 here are the camping cards, correct?

13      **A.**    Those became an issue in the trial, yes.

14      **Q.**    Because those were potential pieces of evidence to  
15 confirm Dean's alibi for 8-20, right?

16      **A.**    Those -- those were evidence concerning that period of  
17 time.

18      **Q.**    And you came to possess some of the cards from the  
19 campground?

20      **A.**    Three, I believe, yes.

21      **Q.**    And, well, we can agree that you only gave three cards to  
22 the prosecutor, correct?

23      **A.**    That's because I only had three cards to give to the  
24 prosecutor.

25      **Q.**    But we can agree that you only gave three cards to the

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1 prosecutor?

2 A. Yes, sir.

3 Q. Okay. And you filed an affidavit in 2008 where you swore  
4 that those were the only three cards that you ever received,  
5 right?

6 A. I believe so, because that was what I received.

7 Q. Okay. I'd like to go through those three cards.

8 MR. KANOVITZ: Your Honor, at this time we'd like to  
9 publish Plaintiff's Exhibit 205, page 4.

10 THE COURT: Any objection on those?

11 MR. McLANDRICH: First, I have to see what it is.  
12 I'm sorry, Your Honor. I'm not sure.

13 MR. KANOVITZ: May I approach?

14 No objection?

15 MR. McLANDRICH: No objection. Thank you.

16 THE COURT: It may be.

17 MS. FRICK: No objection.

18 (Exhibit displayed.)

19 BY MR. KANOVITZ:

20 Q. So one of the three cards that you gave to the prosecutor  
21 is dated May 26, 1988, right?

22 A. Yes, it is.

23 MR. KANOVITZ: Could we go to page 5, please.

24 (Exhibit displayed).

25 BY MR. KANOVITZ:

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1       **Q.**     A second card that you gave to the prosecutor is dated  
2                      July 17, '88, correct?

3       **A.**     It appears to be 15.

4       **Q.**     Okay. Fair enough.

5       **A.**     7-15-88.

6       **Q.**     So the second of the three cards that you gave to the  
7                      prosecutor has a date of 7-15-88, July of '88, correct?

8       **A.**     Yes, sir.

9       **Q.**     And then the third of the three cards that you gave to  
10                  the prosecutor -- this is page 6 -- is dated June of 88,  
11                  correct?

12      **A.**     June 24th of '88.

13      **Q.**     So the three cards that you gave to the prosecutor, one  
14                  is from May, one is from June, and one is from July?

15      **A.**     Correct.

16      **Q.**     Now, you also testified about receiving camping cards  
17                  when you testified at the grand jury, correct?

18      **A.**     I believe so.

19      **Q.**     And you told the grand jury that you had several months'  
20                  worth of cards?

21      **A.**     I have cards from three months.

22      **Q.**     You said the last few months, you had cards from the last  
23                  few months. Do you recall that?

24      **A.**     I don't remember exactly what the exact wording was. I  
25                  do know that I received three cards, and that's what had

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1           been presented to the prosecutor.

2       **Q.**    You didn't tell the grand jury you received three cards.

3       You told them you had cards from the last three months,  
4       correct?

5       **A.**    It's a play on words, but, yes.

6           MR. KANOVITZ: Your Honor, at this time I'd like to  
7       display Plaintiff's 316, page 24, lines 9 through 15.

8           THE COURT: And this is a transcript, I assume.

9           MR. KANOVITZ: Yes.

10          THE COURT: And it's for the purposes of  
11       impeachment?

12          MR. KANOVITZ: Yes.

13          THE COURT: All right.

14          MR. KANOVITZ: Sorry. It's Exhibit 131.

15          MR. McLANDRICH: What page?

16          MR. KANOVITZ: Page 24, lines 9 through 15.

17          MR. McLANDRICH: He hasn't denied seeing it, though.

18          THE COURT: He doesn't remember saying that.

19          Wait a minute. Clarify that. Ask your question again.

20          BY MR. KANOVITZ:

21       **Q.**    Okay. Sir, isn't it true that you -- that you told the  
22       jury, the grand jury, that you had cards from the last few  
23       months?

24       **A.**    I don't remember the exact words of it, but I did  
25       receive three cards over a three-month period.

MOORE - CROSS (Kanovitz)

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1 MR. KANOVITZ: May I proceed?

2 THE COURT: You may.

3 MR. KANOVITZ: Thank you.

4 MR. McLANDRICH: I'm sorry. What page?

5 MR. KANOVITZ: That would be page 24, lines 9  
6 through 15.

7 (Exhibit displayed.)

8 BY MR. KANOVITZ:

9 Q. Okay. Sir, you told the grand jury, "He tried to tell me  
10 that he was down at Twin Knobs campground down in Kentucky,  
11 camping with a friend Jerry Fyffe. I got ahold of the park  
12 rangers down there. I have the registration cards for the  
13 last few months prior to that. Roger Gillispie was down  
14 there. He was down there four days after the girls got  
15 raped."

16 Do you see that?

17 A. Yes, I just read that.

18 Q. And did you testify to that at the grand jury?

19 A. Well, I did. But my view is, is that I have the cards  
20 for a three-month period. It's not that I have all of them  
21 for the last few months.

22 Q. Okay. You told the grand jury, "He was down there four  
23 days after the girls got raped," correct?

24 A. I believe so, yes. Yes.

25 Q. And four days after the girls got raped was in the month

1       of August 1988, correct?

2       A.     August 20th.

3       Q.     Yeah.

4       A.     Yeah.

5       Q.     So where is the cards for August?

6       A.     I was wrong in my statement.

7       Q.     When you told the grand jury that Dean was at the  
8           campground but wasn't there until four days after the girls  
9           got raped, that was just wrong?

10      A.     I evidently made a mistake when it came to being July  
11       or August, and I was looking at the number on the campground  
12       receipt. There never was a campground receipt for August.

13      Q.     Sir, which -- so you had -- you had May, you had June,  
14       and you had July, right?

15      A.     That is correct.

16      Q.     Okay. And those are the only ones you gave to the  
17       prosecutors?

18      A.     Those are the only ones I had, and gave to the  
19       prosecutors.

20      Q.     And July 15th of 1988 is four days after July 11th of  
21       1988, correct?

22      A.     I'm not seeing exactly which one that we're talking  
23       about here. And I don't know that the 15th was that one.  
24       There's one with a 24 on it, and that was probably the one  
25       that was being discussed at the time.

MOORE - CROSS (Kanovitz)

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1       **Q.**     You thought -- okay. So your testimony now is when you  
2     are saying he was down there four days after the girls got  
3     raped, you thought you were talking about June, not about  
4     August?

5       **A.**     When I was trying to describe the campground receipts,  
6     I had never had one for August to talk about. I told you,  
7     I'm -- it's mistaken.

8       **Q.**     When's the first time you told anybody that you testified  
9     to something incorrect at the grand jury?

10      **A.**     I don't -- I don't know if I ever had. I don't  
11     remember.

12      **Q.**     Right before you made that mistake, isn't it true that  
13     you were talking about the days that Dean worked and didn't  
14     work in August of '88?

15      **A.**     I'm not seeing that on here, no.

16      **Q.**     Okay. This is page 5 -- actually, it's still page 24.

17                  THE COURT: First, let's ask him a question.

18                  MR. KANOVITZ: Sorry.

19                  BY MR. KANOVITZ:

20      **Q.**     Isn't it true that before you made the mistake and  
21     confused June for August, immediately before that you were  
22     telling the grand jury that you have Dean's work schedule for  
23     August?

24      **A.**     I don't independently remember that. I do know that I  
25     ended up having Roger's work schedule.

MOORE - CROSS (Kanovitz)

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1       **Q.**     And that was for August, right?

2       **A.**     Without seeing the work schedule, I can't tell you  
3                   specifically how many periods of days or weeks are on that.

4                   MR. KANOVITZ: Your Honor, can I publish Plaintiff's  
5                   Exhibit 105, page 1, which was previously shown to the jury?

6                   THE COURT: It was previous -- what is it?

7                   MR. KANOVITZ: It is his work schedule for August.

8                   THE COURT: You may.

9                   (Exhibit displayed.)

10          BY MR. KANOVITZ:

11        **Q.**     Sir, this is the document that you had, correct?

12        **A.**     It's a document that we had.

13        **Q.**     And this document reflects Dean's work schedule in  
14                   August?

15        **A.**     I believe it's showing from the 1st to the 7th.

16        **Q.**     So the cards that you had with his work schedule were for  
17                   August, not for June, correct?

18        **A.**     I never had any campground receipts for August.

19                   THE COURT: No, no, no, that wasn't the question.  
20                   It was the work schedule. You had this, the cards for the  
21                   work schedule, in August.

22                   THE WITNESS: We had the schedule for August.

23          BY MR. KANOVITZ:

24        **Q.**     And you did not have the schedule for June; you had the  
25                   schedule for August, correct?

MOORE - CROSS (Kanovitz)

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1 A. Based on this.

2 Q. Okay. And you actually had reached out to Rick Wolfe,  
3 the manager over -- the security manager over at GM, and  
4 specifically had asked him for these records, correct?

5 A. Yes. There had been a request.

6 Q. And he wrote you back a letter that you put in the file?

7 A. I believe that there was, yes.

8 Q. And he said that -- here's the records for August 1st  
9 through August 7th and for August 15th through August 21st,  
10 1988, correct?

11 A. I believe I did receive those records.

12 Q. And, of course, that was the month that you were  
13 interested in. You didn't worry about June, right?

14 A. No, I would specifically be focusing at that time on  
15 the two specific dates that were involved in this incident,  
16 being August 5th and August 20th.

17 Q. All right. And at any rate, you did not give the  
18 prosecutor any campground cards from August of 1988, correct?

19 | A. August -- no.

20 Q. All right. Now, you kept a copy of the Dean Gillispie  
21 file in your garage, correct?

22 A. I had made multiple copies for prosecutors -- the  
23 answer to your question is yes.

24 Q. And you kept it past the time when he got convicted,  
25 right?

MOORE - CROSS (Kanovitz)

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1       **A.**     Yes.

2       **Q.**     And it stayed in your garage until there was some  
3                   flooding?

4       **A.**     Yes.

5       **Q.**     And after that, it got mildewy. So you threw it away?

6       **A.**     I did not throw it away.

7       **Q.**     Your wife at the time threw it away?

8       **A.**     My ex had contacted somebody and had some people come  
9                   out, and they loaded up a whole bunch of stuff.

10      **Q.**     Okay. And is it fair to say that was like in late 1990s?

11      **A.**     I don't remember exactly when it was. It could have  
12                   even been later than that. I don't remember the exact time.  
13                   It was just an extra copy that I had made to keep in case  
14                   some day I ended up writing a book or something like that  
15                   concerning the cases that I had worked through my career.

16      **Q.**     So you were considering writing a book about the Best  
17                   Products rape case?

18      **A.**     Just all cases in general that I may have had over my  
19                   career. It was -- it was something that I had thought  
20                   about.

21      **Q.**     And when you were considering how to make a book that  
22                   would attract readers, did you believe it would be more  
23                   interesting if the cases were solved?

24      **A.**     I don't know what I was thinking specifically at the  
25                   time. I was just thinking that, you know, at some point

1 maybe down the road in life and after my career that I may  
2 put together some of the cases that I had done.

3 Q. A couple more -- a couple more areas, and then we're  
4 done, sir.

5 Rewinding back to August 8th of 1990, you interviewed  
6 Dean, correct?

7 A. On 8-8, yes.

8 Q. That's the one where you took the Polaroids?

9 A. Yes.

10 Q. But you put nothing in your report about taking Polaroids  
11 of him, correct?

12 A. That's correct.

13 Q. And why?

14 A. I must have just forgot it at the time. I don't know.

15 Q. And when you saw him --

16 A. I know there was testimony about it.

17 Q. When you saw him at the interview, you noticed he had  
18 gray hair?

19 A. I what?

20 Q. When you saw him at the interview, you saw that he had  
21 gray hair, correct?

22 A. I don't remember that independently.

23 Q. Okay.

24 A. Gray hair?

25 Q. Around the temples?

MOORE - CROSS (Kanovitz)

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1       **A.**     I don't remember that.

2       **Q.**     Okay. At any rate, you didn't put anything in your  
3 report about what his hair looked like, correct?

4       **A.**     I don't know why I would have.

5       **Q.**     And Dean asked you at that time if he could take a  
6 polygraph, prove himself to you?

7       **A.**     I don't know. I've heard this before. I do not know  
8 that that ever happened. I've never specifically been asked  
9 about a polygraph. I know that Folfas had said something  
10 about a polygraph, and I had been told that that's not  
11 something that we were going to offer.

12              I can also tell you that with Miami Township, that was  
13 not a standard practice.

14       **Q.**     It happened, though, didn't it?

15       **A.**     I'm not saying that it didn't. I'm saying I was never  
16 specifically asked about that.

17       **Q.**     And there's -- okay. Let me draw a distinction. One  
18 thing is actually giving a suspect a polygraph, right? And  
19 then another thing is just asking a suspect, are you willing  
20 to take a polygraph. Two different things, understand?

21              MR. McLANDRICH: Objection.

22              THE COURT: Well, I don't know where this is going,  
23 but are those two different things?

24              THE WITNESS: I guess, but I never got asked about a  
25 polygraph.

MOORE - CROSS (Kanovitz)

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1 THE COURT: Next.

2 BY MR. KANOVITZ:

3 Q. And asking a suspect to take a polygraph is a law  
4 enforcement tool to gauge the sincerity of what you were being  
5 told by the suspect, correct?

6 MR. McLANDRICH: Objection.

7 THE COURT: If he knows.

8 Overruled. If he knows.

9 THE WITNESS: It's my understanding that polygraphs  
10 are not that reliable.

11 BY MR. KANOVITZ:

12 Q. Now, if the topic -- if you -- you had a tape recorder  
13 right by your side during the interview, correct?

14 THE COURT: Counsel, do me a favor.

15 MR. KANOVITZ: I'm sorry.

16 THE COURT: Phrase everything as a question. Just  
17 don't make a statement.

18 MR. KANOVITZ: Sorry, Judge. It's the style that I  
19 will work on.

20 THE COURT: I understand.

21 BY MR. KANOVITZ:

22 Q. And, sir, isn't it true that you had a tape recorder  
23 right by your side when you were interviewing Dean?

24 A. I believe that there was a tape recorder there.

25 Q. And so you had the option of tape recording him but chose

1 not to?

2 A. It's my choice, yes.

3 Q. Why did you choose not to?

4 A. I don't remember at this time.

5 Q. Okay. And you also -- during the interview, you also  
6 asked Dean to see his tattoos?

7 A. See, that's one thing I definitely don't remember. I  
8 mean, at that point there would have not been any reason to  
9 ask about that because I don't remember any of the -- I  
10 don't remember it coming up with any of the victims at this  
11 point.

12 I know that we do ask about tattoos --

13 THE COURT: All right. You answered the question.

14 BY MR. KANOVITZ:

15 Q. Isn't it true that you asked specifically to see his  
16 forearm tattoos?

17 A. I just told you I don't remember.

18 Q. Isn't it true that C.W. or B.W. later remembered that he  
19 had tattoos -- that the perpetrator had arm tattoos, forearm  
20 tattoos?

21 A. I do not remember that.

22 Q. Now, Dean was being cooperative with you during the  
23 interview, right?

24 A. He was answering some questions.

25 Q. He answered every question you asked him?

1       **A.**     I believe from -- based on my report, yes, till I ended  
2                  the interview.

3       **Q.**     Well, and his answers were consistent, we know, because  
4                  you were asking him about things that the perpetrator would  
5                  have done, right?

6                  MR. KANOVITZ: I'm sorry. May I rephrase that?

7                  THE COURT: You may. Make it into a question.

8                  BY MR. KANOVITZ:

9       **Q.**     For example, you asked Mr. Gillispie if he smoked, and he  
10                 told you no.

11                 MR. McLANDRICH: Objection.

12                 THE COURT: Okay. Ask him that. Ask a question.  
13                 Just don't make a statement.

14                 MR. KANOVITZ: I'm sorry. I'm sorry.

15                 BY MR. KANOVITZ:

16       **Q.**     Isn't it true that you asked Mr. Gillispie if he smoked,  
17                 and he told you no?

18       **A.**     That would be true.

19       **Q.**     Then you asked him if he had family problems. He told  
20                 you no.

21       **A.**     Yes.

22       **Q.**     You asked him if he had problems with his grandfather.  
23                 He said his grandparents are dead.

24                 And you asked if he had a grandfather living. He said  
25                 yes, but the family does not associate with him because of

1 family problems, correct?

2 **A.** Yes.

3 **Q.** And then you asked him if -- then isn't it true that you  
4 asked him to tell you what those problems might be, and he  
5 said he didn't want to do that; they are just family problems,  
6 right?

7 **A.** I agree with that.

8 **Q.** Then you asked him if he had ever been molested by his  
9 grandfather, and he said no.

10 **A.** That's true.

11 **Q.** And then, isn't it true, you asked him if he had heard  
12 about the Best Products rape prior to you calling him, and he  
13 replied no?

14 **A.** That's true.

15 **Q.** And because he was replying no, you said that the  
16 questioning was going nowhere, correct?

17 **A.** I did make that statement.

18 **Q.** And, in fact, you were learning information about any  
19 question you asked Dean he was happy to answer, correct?

20 **A.** He answered the questions that I had at the time, and I  
21 did feel that that was going nowhere at that time because I  
22 also knew that on the side, I had already had him identified  
23 by two of the victims. So looking at the questions that I  
24 am getting at the time, my feeling at the time, that this  
25 was going to end up being a questioning session where

1 everything was no, no, no, no.

2 Q. Sir, you knew -- isn't it true that you knew at the time  
3 that you interviewed him that eyewitnesses can make mistakes?

4 A. I actually know that eyewitnesses can make mistakes.

5 Q. Yeah. And so -- okay. At any rate, you're the one that  
6 terminated the interview, correct?

7 A. In that case, yes.

8 Q. And then you noted that having terminated the interview,  
9 you were going to be showing the photo array to S.C., correct?

10 THE COURT: Is that a question, counsel?

11 MR. KANOVITZ: I was ending it with "correct," but I  
12 will ask it differently, Your Honor.

13 BY MR. KANOVITZ:

14 Q. Isn't it true that after terminating the interview, you  
15 wrote that you were then going to be showing the photo array  
16 to S.C.?

17 A. If that's the context as you are reading it from the  
18 report, yes.

19 Q. So you perceived Dean as being uncooperative with you; is  
20 that correct?

21 A. I don't know that I perceived at that time that he was  
22 being uncooperative. I just think that the questioning at  
23 that time, it was just straight across the board that it  
24 was -- he was going to continue to say no, and basically  
25 meaning no knowledge.

MOORE - CROSS (Kanovitz)

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1       **Q.**     Okay. Sir, do you recall the women's description of the  
2 clothes that the perpetrator wore?

3       **A.**     I don't remember what their description was.

4       **Q.**     Do you recall whether they described a gold necklace with  
5 a medallion?

6       **A.**     I do remember that there was something about a gold  
7 necklace.

8       **Q.**     Do you recall that they mentioned brightly colored,  
9 high-top tennis shoes?

10      **A.**     I don't independently remember that.

11      **Q.**     Okay. Do you recall that they mentioned a bright,  
12 multicolored short-sleeved shirt?

13      **A.**     I know that there was something said about a shirt, but  
14 I don't know -- remember that wording.

15      **Q.**     And --

16      **A.**     We're talking about what somebody else said, right?

17      **Q.**     Yes, but you had the reports of what they said, correct?

18      **A.**     Yes.

19      **Q.**     And do you recall that they both mentioned a silver-  
20 colored small handgun?

21      **A.**     I know that that was stated, I believe by all victims.

22      **Q.**     Now, there came a time where you got a search warrant to  
23 search Dean's house, correct?

24      **A.**     At the direction of the Montgomery County Prosecutor's  
25 Office requesting that I do so, I did get a search warrant.

MOORE - CROSS (Kanovitz)

721

1       **Q.**     And you personally served that search warrant, correct?

2       **A.**     I was present.

3       **Q.**     Well, you were there --

4       **A.**     Yes, and served --

5       **Q.**     -- and entered his house and participated in the search,  
6 correct?

7       **A.**     Yes, sir.

8       **Q.**     And Dean had no warning that you were about to come,  
9 correct?

10      **A.**     No.

11      **Q.**     Okay. And when you searched his house, you found -- you  
12     found some, like, rifles used for like squirrel hunting-type  
13     stuff, right?

14      **A.**     I believe so.

15      **Q.**     Okay. You found no handgun?

16      **A.**     No.

17      **Q.**     You found no cigarettes?

18      **A.**     I can't remember that I specifically looked for  
19     cigarettes at that time.

20      **Q.**     Well, you knew that cigarettes were a significant feature  
21     of this investigation, correct?

22      **A.**     That would be correct.

23      **Q.**     So given your usual practices, do you believe that you  
24     would have looked for cigarettes?

25      **A.**     I believe that there probably were. I had multiple

MOORE - CROSS (Kanovitz)

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1       people there, other than myself, looking.

2       **Q.**     And nobody saw any packs of cigarettes as far as you  
3           know, correct?

4       **A.**     As far as I know.

5       **Q.**     Okay. And did you see any ashtrays?

6       **A.**     I don't remember.

7       **Q.**     Okay. If you had seen ashtrays, would you have noted  
8           that and taken them into evidence?

9                   THE COURT: Counsel, isn't that getting a little  
10          speculative here? I mean, if he had seen -- he didn't see any  
11          ashtrays.

12                   MR. KANOVITZ: Okay. Thank you, Your Honor.

13                   BY MR. KANOVITZ:

14       **Q.**     Another feature that the women described was that the man  
15          wore cologne, very strong cologne. Do you recall that?

16       **A.**     Yeah, I do seem to remember reading that.

17       **Q.**     Did you find any cologne during the search?

18       **A.**     No.

19       **Q.**     Did you find any gold chain-type necklace?

20       **A.**     I thought we went through that, but, no.

21       **Q.**     And did you find any high-tops?

22       **A.**     I don't remember.

23                   MR. KANOVITZ: May I confer, Your Honor?

24                   (Pause.)

25                   MR. KANOVITZ: No further questions, Your Honor.

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1                   THE COURT: I think this would probably be a good  
2 time to break for 15 minutes, and then we will be ready for  
3 direct exam -- or cross-exam by the Township.

4                   THE COURTROOM DEPUTY: All rise. This court stands  
5 in recess.

6                   (Jury out at 2:24 p.m.)

7                   (Recess at 2:24 p.m.)

8                   (Jury in at 2:42 p.m.)

9                   (In open court at 2:43 p.m.)

10                  THE COURT: We are back on the record.

11                  Ladies and gentlemen, we're again, as we did previously  
12 once in this trial, we are going to take a witness out of  
13 order during the examination of Detective Moore.

14                  Again, that's just for the purposes of trying to get as  
15 many people on and off as we can to keep the matter moving  
16 along.

17                  I will also tell you that the Court's schedule is  
18 modified just a little today. We are going to be going until  
19 4:30.

20                  Counsel ready to proceed?

21                  MR. OWENS: Yes, Your Honor. Our next witness out  
22 of order is Dr. Benjamin Miller.

23                  **BENJAMIN MILLER, PLAINTIFF'S WITNESS, SWORN**

24                  THE COURT: Dr. Miller, please try to keep your  
25 voice up so we can all hear your responses to the inquiries.

1        You can utilize the microphone as you wish, but if you get too  
2 close, it will muffle you; if you get away, it won't pick you  
3 up. So if you keep your voice up, that pretty much solves the  
4 problem, all right?

5              THE WITNESS: Will do.

6              THE COURT: You may inquire.

7              MR. OWENS: Thank you, Your Honor.

8              **DIRECT EXAMINATION**

9              BY MR. OWENS:

10          Q.     Can you please just state and spell your name for the  
11 record?

12          A.     Benjamin Miller, B-E-N-J-A-M-I-N M-I-L-L-E-R.

13          Q.     And, Dr. Miller, where are you employed?

14          A.     I have a private practice in Beatrice, Ohio.

15          Q.     And what field do you work in?

16          A.     I have a license in clinical psychology.

17          Q.     And can you just describe for us your educational  
18 background?

19          A.     Sure. I got my bachelor's in 2006, my master's in  
20 2008. Bachelor's in psychology, master's in clinical  
21 psychology, and then my Ph.D. in clinical psychology in  
22 2014.

23          Q.     And do you work as part of a group of psychologists doing  
24 any specific subfield in psychology?

25          A.     Right now it's still me, still just me, but I do

1        clinical and also work a lot in the forensic field as well.

2        Q.      Got it. So when you say you work in clinical and  
3            forensic field, what does your sort of day-to-day work  
4            involve?

5        A.      Day to day is typically seeing clients for a variety of  
6            psychological ailments, doing diagnostic assessment on them,  
7            then treating them.

8            I also do, intermittently, forensic evaluation as  
9            requested by different attorneys typically. Sometimes court  
10          ordered on a variety of forensic areas, including sex  
11          offender, various just general diagnoses -- fitness for  
12          duties, custody, parenting, anything that sort of relates to  
13          the legal field.

14        Q.      So just to make sure it's clear, so when you talk about  
15          doing forensic diagnosis work, what does that mean?

16        A.      It's very similar to typical diagnostic work in the  
17          clinical, you know, psychological field. But generally  
18          there is sort of a legal aspect to it. Sometimes it deals  
19          with incarceration. Sometimes it deals with other various  
20          legal factors. Sometimes there would be a presentencing,  
21          sometimes, evaluation. There will be something that many  
22          times my reports are submitted to the courts. Sometimes  
23          they are directly submitted to the judges and/or attorneys  
24          on a variety of areas, just depending on what's, you know,  
25          requested.

1       Q.     And how long have you been practicing as a psychologist?

2       A.     I was licensed in 20 -- let's see here. I completed my  
3           Ph.D. in 2014. I worked under various licensed  
4           professionals for a couple years after that. And I was  
5           first independently licensed in 2019 when I opened my own  
6           practice.

7       Q.     Okay. So basically since 2014, so basically like the  
8           last six or seven years or so?

9       A.     About eight, yeah, I have been practicing clinically.  
10          And before that internship, various externships, but that  
11          was pre -- pre Ph.D. So using my master's, I practiced for  
12          a number of years while in school, and then I completed my  
13          Ph.D. in 2014, began working in the clinical field, and  
14          became independently licensed in 2019.

15       Q.     Got it. And as part of your work, do you do  
16          diagnostic -- or the forensic work, do you do consultations of  
17          people for different types of psychological issues in a  
18          setting where you aren't going to be seeing them as their  
19          therapist or ongoing mental health counselor?

20       A.     Correct. I see them specifically for the referral  
21          diagnosis. That's -- my only interaction with them will be  
22          for that diagnostic request and typically a report as well.  
23          And that's submitted to whoever the referral was, either the  
24          attorney, the individual, or the courts. And I submit that  
25          report, and then it's typically the last I see of that

1 individual.

2 Q. Got it. And so you kind of got to my next question,  
3 which is, for when you do these forensic psychological  
4 evaluations, you usually see a person once, maybe twice, but  
5 it's not an ongoing relationship; is that right?

6 A. That's correct. I typically try and wrap it up in one  
7 especially if they have traveled a distance to see me. But,  
8 you know, I can stretch it over a couple sessions if  
9 necessary, do a little bit of diagnostic testing as well,  
10 personality inventories, things of that nature that are  
11 helpful to assist me in my diagnosis. And, yeah, typically  
12 it's a one-shot deal.

13 Q. And are you familiar with the forensic tools used to  
14 evaluate things like trauma?

15 A. Yes. Again, the primary method to do that is the  
16 clinical interview, the semi-structured clinical interview.  
17 But I do administer the MMPI typically as well, being a  
18 fairly peer-reviewed objective measure of personality  
19 inventory.

20 Q. And how many times -- and I think you said the MMPI. Let  
21 me just -- is that the Minnesota Multiphasic Personality  
22 Inventory?

23 A. Yes, it is.

24 Q. Okay. What is the MMPI?

25 A. It's a -- it's a 500, I believe, -87 questions,

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1 possibly -78 questions, true/false, and it's a variety --  
2 it's been normed over various populations and diagnoses.  
3 And by administering that, again, the person takes it  
4 themselves. They read the questions and answer true/false.  
5 It's now digitized. And since COVID, it's actually -- we  
6 can actually just send a link, and they can do it  
7 themselves, wherever they'd like to do it, but I believe we  
8 did it in my office setting.

9 They do that, and it can help me gauge diagnostically,  
10 give some general ideas about personality characteristics.  
11 You know, they would say something along the lines of people  
12 with similar results might have this and this personality  
13 trait. And I usually can form my diagnostic opinion.

14 Q. In the last --

15 THE COURT: Doctor, could you just slow down a  
16 little bit.

17 THE WITNESS: Yes.

18 THE COURT: All right. Thank you.

19 THE WITNESS: My apology.

20 BY MR. OWENS:

21 Q. So in the last seven to eight years of practice, how many  
22 times have you done forensic evaluations or administered the  
23 MMPI? If you had to estimate. Don't worry --

24 A. Yeah, sure. I'd say at least 75, probably a hundred  
25 times.

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1                   MR. OWENS: Your Honor, at this time I'd ask that  
2 Dr. Miller be qualified as an expert to provide opinion  
3 testimony in the field of forensic psychology.

4                   THE COURT: Objection?

5                   MR. McLANDRICH: No objection.

6                   MS. FRICK: No, Your Honor.

7                   THE COURT: You may.

8 BY MR. OWENS:

9                   **Q.** All right, Dr. Miller. So in this case -- and I think  
10 you referred to it a little bit here -- did you do a forensic  
11 evaluation of Mr. Dean Gillispie?

12                  **A.** I did.

13                  **Q.** And can you just -- I think you sort of hinted at the  
14 process for that, but can you just describe how that works?

15                  **A.** I met with him at my office. I believe it was  
16 approximately three hours. This was on May 6, 2019. And we  
17 also -- at that time he also completed the MMPI, Minnesota  
18 Multiphasic Personality Inventory, at that time. I set him  
19 up in the waiting room to complete that, I believe on his  
20 phone.

21                  **Q.** And in addition to doing that interview, did you also  
22 review documents about Mr. Gillispie's background?

23                  **A.** I did. I had a series of documents. Would you like me  
24 to tell you what those were?

25                  **Q.** No. I'm just going to ask you about a couple of them.

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1       **A.**     Okay.

2       **Q.**     So were you aware you received -- just because there are  
3           certain parameters that apply here in court.

4           So did you read court decisions overturning  
5           Mr. Gillispie's conviction?

6       **A.**     I did.

7       **Q.**     And we're not going to talk about the details of those.

8           Did you review documents related to Mr. Gillispie's  
9           evaluation and administration of the MMPI while he was in  
10          prison?

11       **A.**     I did.

12       **Q.**     And was that forensic psychological evaluation by a  
13          doctor named Susan Dyer?

14       **A.**     Yes, it was.

15       **Q.**     Got it.

16           MR. OWENS: And just for the record, Your Honor, I'd  
17          like to publish Plaintiff's Exhibit -- Trial Exhibit Number  
18          254, which is that test which I just mentioned.

19           Any objection? I mean, this is where we exchanged them  
20          in advance.

21           MR. McLANDRICH: It's fine, Your Honor. No  
22          objection.

23           MR. HERMAN: No objection.

24           MR. OWENS: Plaintiff's Trial Exhibit 254.

25           (Exhibit displayed.)

1 BY MR. OWENS:

2 Q. All right. Dr. Miller, is this a forensic psychiatry  
3 report from June of 2000 that you reviewed when conducting  
4 your analysis?

5 A. Yes.

6 MR. OWENS: You can take it down. Thank you.

7 BY MR. OWENS:

8 Q. So as part of your structured interview with  
9 Mr. Gillispie, what sorts of things did you find out about  
10 him?

11 A. I got a full background history -- how he was raised,  
12 where he was raised; family history -- siblings, things of  
13 that nature; where he went to school. Again, educational  
14 history, work history, some of his relationship history, as  
15 well as obviously very focused, his legal history, again  
16 prior to incarceration. Drug and alcohol history, things of  
17 that nature. And obviously, his symptoms following his  
18 incarceration.

19 Q. Got it. And so I just want to draw your attention to --  
20 and I know you have some documents up there. Is that a copy  
21 of your report in this case?

22 A. It is.

23 Q. And if it would assist you in testifying or answering any  
24 of these questions, feel free to reference it, okay?

25 A. Thank you.

1       **Q.**     As far as conducting a mental health history, can you  
2 just sort of summarize what that was?

3       **A.**     Sure. Conduct a semi-structured clinical interview,  
4 which is a psychosocial history, a person's background,  
5 their upbringing, their family life. Questions asked as  
6 necessary regarding different things -- if there was family  
7 discord, domestic violence, any divorce, things of that  
8 nature. Siblings, relationships with those siblings.

9                  Then going on through educational history, work  
10 history, relationship histories.

11               And then we discuss a variety of other areas of life  
12 functioning, such as legal history, physical health, mental  
13 health, whether there is any mental health treatment,  
14 substance use, both legal and illegal, and history therein.

15               And then we ultimately come to mental health symptoms,  
16 both throughout the life span and the present time, to  
17 achieve a, you know, diagnostic history and current  
18 diagnoses, if any.

19       **Q.**     Sure. So did part of your mental health history analysis  
20 of Mr. Gillispie involve discussion with him about being  
21 required to participate in sex offender evaluation while he  
22 was in prison?

23       **A.**     Yes. And I believe -- he reported as being a long  
24 battle. And this is actually something that came up in the  
25 report by Dr. Dyer, Dr. Susan Perry Dyer that you put up on

1       the screen a minute ago, that she noted that -- should I  
2       read from my report or should I paraphrase?

3       **Q.**      If you are going to refer to Dr. Dyer's report, I'll just  
4       show it to you. I think I know what you were going to refer  
5       to, but why don't we all be on the same page.

6                    MR. OWENS: So get page 8 of Exhibit Number 254.

7                    Thank you. I'm focusing on the bottom paragraph.

8                    (Exhibit displayed.)

9                    BY MR. OWENS:

10          **Q.**     Is that where you are going to start reading?

11          **A.**     Correct.

12          **Q.**     Okay. And I'll just read it.

13                   THE COURT: Counsel, can I see you?

14                   (At sidebar off the record.)

15                   THE COURT: Sorry for the interruption. Counsel,  
16        you may inquire.

17                   (Exhibit displayed.)

18                   BY MR. OWENS:

19          **Q.**     Ms. Dyer -- I'm sorry. Dr. Miller.

20                   Dr. Miller, we were just looking at page 8, and then we  
21        will go on to page 9 of Dr. Dyer's report. And I will just  
22        read this.

23                   And this is something that you relied on as part of your  
24        assessment, correct?

25          **A.**     Yes.

1       **Q.**     It says, "Also of concern is the fact that Mr. Gillispie  
2 continues to proclaim his innocence. This situation appears  
3 to be a catch 22. If indeed Mr. Gillispie should later be  
4 found innocent, his behavior would be entirely consistent with  
5 that finding. If, on the other hand, his conviction stands  
6 through appeal" -- go onto the next page, perfect -- "his  
7 behavior would demonstrate massive denial about his rape  
8 behavior and would not bode well for future recidivism. His  
9 denial would likely prevent him from seeking treatment for sex  
10 offender behavior, and it is known that successful treatment  
11 can mediate against future recidivism."

12                  Is that something you relied on?

13       **A.**     Yes. And this is actually something that I see in my  
14 work doing sex offender treatment. As then Mr. Gillispie  
15 told me, he was punished repeatedly and placed in solitary  
16 confinement due to his refusal to admit guilt and therefore  
17 his inability to participate in sex offender treatment,  
18 which required, as a prerequisite to enter that treatment,  
19 admission of guilt of having committed the rapes.

20       **Q.**     And he refused to do that?

21       **A.**     He refused to admit guilt, correct, and therefore was  
22 not allowed to complete those treatments.

23       **Q.**     So in addition -- basically cutting to the chase, as a  
24 result of your forensic interview and looking at this report  
25 and other documents, did you make a diagnostic conclusion with

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1 respect to Mr. Gillispie?

2 A. I did.

3 Q. And what was that?

4 A. A diagnosis of posttraumatic stress disorder.

5 Q. And was that as a result of any particular stressor?

6 A. Yes. It appeared proximal to the stressor of  
7 incarceration.

8 Q. Over the, approximately, course of 20 years?

9 A. Correct.

10 Q. Now, is that diagnosis generally called PTSD?

11 A. Yes, it is.

12 Q. And is that a clinical diagnosis from the literature?

13 A. Yes, it is.

14 Q. And are there specific criteria you used to reach that  
15 conclusion?

16 A. Yes, there are.

17 Q. And what I'd like to do is, I know there are a number of  
18 them. I am just going to ask you about different diagnostic  
19 criteria, okay?

20 A. Sounds good.

21 Q. So is one diagnostic criteria exposure to actual or  
22 threatened death, serious injury, or sexual violence in a  
23 number of ways?

24 A. Correct. It has to be in one or more of four possible  
25 ways.

1       Q.     What are those ways?

2       A.     The four possible ways that the person could have  
3              exposure to actual or threatened death, serious injury, or  
4              sexual violence would be: number one, directly experiencing  
5              the traumatic events; number two, witnessing in person the  
6              events as it occurred to others; number three, learning the  
7              traumatic events occurred to a close family member or close  
8              friend. In the case of actual or threatened death of a  
9              family member or friend, the events must have been violent  
10             or accidental. And the fourth one would be experiencing  
11             repeated or extreme exposure to aversive details of the  
12             traumatic event. Example, first responding, selecting human  
13             remains, police officers repeatedly exposed to details of --

14       Q.     Can I just ask you -- you got to slow down, Doctor.

15       A.     I apologize.

16       Q.     And just -- you don't have to read it from your report  
17             directly. We are just going to have a conversation about the  
18             work that you did, okay?

19       A.     Sounds good.

20       Q.     All right. So I will take it back, all right? So just  
21             focus right here.

22             So were there -- was there evidence that you saw with  
23             Mr. Gillispie that met the criteria for exposure to actual or  
24             threatened death or other violence?

25       A.     Yes, there was.

1       **Q.**     And just very briefly, can you describe what you relied  
2     upon in reaching your conclusion as it relates to that  
3     criterion?

4       **A.**     He reported seeing, you know, actual or threatened  
5     death every day, was the quote that he said. He had a  
6     number of examples of where he saw people violently maimed  
7     or murdered in front of him. And he felt the threat both to  
8     himself and experienced it by seeing it occur to others.

9       **Q.**     All right. What's the second -- what's the next criteria  
10    that you use in evaluating somebody for PTSD?

11      **A.**     This one is the presence of intrusive symptoms  
12    following the event.

13      **Q.**     And could that include memories, nightmares, things like  
14    that?

15      **A.**     Yes, recurrent distressing dreams would be one of them.

16      **Q.**     All right. Did you see any evidence that supported this  
17    criterion in your analysis?

18      **A.**     Yes, he did report having repeated recurrent  
19    distressing dreams regarding his experience. Nightmares he  
20    reported. He reported that they come and go, so they were  
21    intermittent, and that it got to him. That was his quote.

22                  In addition, another intrusive symptom that he  
23    displayed which meets diagnostic criterion was a  
24    physiological reaction to external cues.

25      **Q.**     What do you mean by that?

1       **A.**     So when something that would remind him of the  
2              traumatic events or experiences, one of them would be that  
3              anyone in uniform, whenever he would see someone dressed in  
4              any type of uniform, that would upset him greatly. It would  
5              remind him of his period during incarceration and would  
6              evoke a response from him.

7       **Q.**     And then the next criterion that I believe you use in the  
8              literature is the persistent avoidance of stimuli associated  
9              with the traumatic events before, during, or after, right?

10      **A.**     That is correct.

11      **Q.**     Okay. Did you see any evidence of this criterion in your  
12              evaluation of Mr. Gillispie?

13      **A.**     Yes, I did.

14      **Q.**     And just very briefly, can you just summarize what that  
15              was?

16      **A.**     So, interestingly, the first sign of this, which I  
17              didn't -- didn't call forward until later, was as I was  
18              escorting him from my waiting room into my office, I  
19              politely offered him to walk in front of me, and he refused  
20              adamantly, that he would not walk in front of me and I had  
21              to walk in front of him.

22              It was only later when I asked him about that, he  
23              informed me that he had -- he had extreme difficulty with  
24              allowing people behind him. So when he walks down the  
25              street, if anyone were to walk behind him, he would be

1 afraid that he would be attacked, and it would evoke a fear  
2 response.

3 Similar, being in crowds, things of that nature were  
4 very, very difficult for him.

5 In restaurants, he'd have to face the door. He  
6 wouldn't allow anyone to sit behind him, again, out of fear  
7 of being attacked.

8 Q. So the next criterion that you've got -- and we are on  
9 Criterion D. I think there are six, so we are halfway  
10 there -- are negative alterations in cognitions and mood  
11 associated with the traumatic events. And which have two or  
12 more additional criteria; is that right?

13 A. That is correct.

14 Q. And what are those two or more additional criteria as it  
15 relates to negative alterations and mood associations and  
16 cognitive ability?

17 A. Correct. So one that he met criterion for was negative  
18 emotional state. Again, it was these symptoms would cause  
19 extreme emotional states.

20 In addition, marked diminished interest or  
21 participation in significant activities. Again, he  
22 curtailed multiple activities. He said he took trips. I  
23 believe it was New York he had been to, but those trips were  
24 affected very negatively and were very painful for him  
25 because of -- because of his symptoms.

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1           In addition, an interesting one was a persistent and  
2 exaggerated negative belief or expectation about oneself,  
3 others, or the world. And this one also came about, you  
4 know, during -- you know, casually and was not called forth  
5 from -- during the evaluation. It was when I offered him  
6 some coffee in between our interview sessions, and he, you  
7 know, politely said no.

8           And then later on I offered him again as he was, you  
9 know, leaving, if he would like a cup of coffee, that he had  
10 a long drive, and he was very adamant that he would refuse  
11 to drink anything with any kind of stimulant. I believe he  
12 referred to it as control designed by the government. And  
13 he said, "There is nothing that's ever going to have hold of  
14 me or that I can't function without having." And,  
15 therefore, he refused anything with any stimulant such as  
16 caffeine in it.

17          **Q.**     As far as the next criterion, which is marked alterations  
18           in arousal and reactivity associated with the traumatic event.  
19           And does that include things like hypervigilance and  
20           exaggerated startle response?

21          **A.**     Correct. In addition to things such as sleep  
22           disturbance, irritable behavior, anger outbursts, problems  
23           with concentration, et cetera.

24          **Q.**     And then based upon your interview, the MMPI, and your  
25           own interactions with Mr. Gillispie, did you see evidence that

1 would support this criterion?

2       **A.** Again, per his report and the evaluation, he reported  
3 numerous scenarios where he would have an overreactive --  
4 overreaction that would -- would not necessarily be called  
5 for based on the input, based on the external event, which  
6 clearly relates back to his time during incarceration --  
7 extreme anger outbursts; difficulty sleeping, which he  
8 directly connected to, again, painful memories of his time  
9 during incarceration; difficulty with concentration, that's  
10 a little bit harder to pinpoint exactly a direct  
11 correlation, but, again, it required two criterion, and he  
12 met multiple criterion in that category.

13       **Q.** Got it. So the next criterion's probably the easy one,  
14 is the duration of the triggering event lasts more than a  
15 year. That was -- obviously, evidence of that here, right?

16       **A.** Just a correction. The disturbance itself lasts more  
17 than a month. The triggering event can be a one-time event.  
18 In this case, it appears it was a very extended event,  
19 obviously, during most if not all of his time during  
20 incarceration, as well as periods in solitary confinement,  
21 which, as we referred to earlier, he reported being as a  
22 punishment for refusal to admit committing rapes.

23       **Q.** And so I got it. So it's not just the -- it's not the  
24 length of incarceration, but it's the fact that he's reporting  
25 the other criteria of, whether it's sleep, nightmares,

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1       hypervigilance, things like that for longer than a month; is  
2       that right?

3       **A.**      That's correct.

4       **Q.**      Okay. And then the next criterion is that the  
5       disturbance causes clinically significant distress or  
6       impairment in social, occupational, or other settings, right?

7       **A.**      That's correct.

8       **Q.**      Did you see evidence that would support this criterion as  
9       well?

10      **A.**     Yes. He reported it across settings. And, again, it  
11      only actually requires one setting. So, for example, even  
12      though he was not employed, and therefore didn't cause  
13      occupational employment, it caused social/emotional distress  
14      and therefore met criterion.

15      **Q.**     Got it. And then just the last thing, you know, when  
16      you're making a PTSD diagnosis, you want to make sure that  
17      it's not related to substance or alcohol abuse or anything  
18      like that, right?

19      **A.**     That is correct.

20      **Q.**     Did you see any evidence that Mr. Gillispie's trauma or  
21      trauma responses or disturbance were related to any kind of  
22      alcohol or substance abuse?

23      **A.**     No.

24      **Q.**     So at the end of the day, what was your diagnosis of  
25      Mr. Gillispie?

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1       **A.**     My diagnosis was posttraumatic stress disorder, PTSD,  
2                   and again the proximal cause being his incarceration.

**Q.** Those are all my questions. Thank you, Dr. Miller.

4 A. You're welcome.

5 THE COURT: Counsel, anything?

6 MR. McLANDRICH: Yes, Your Honor. Just give me one  
7 second.

8 THE COURT: No problem.

## CROSS-EXAMINATION

10 BY MR. McLANDRICH:

11 Q. Hello, Doctor.

12 A. Hello.

13 Q. I'm John McLandrich. I represent Detective Moore. Just  
14 a few questions about your report, sir.

15 So we don't have any of the actual data that underlies  
16 your report. We don't have the MMPI that you did. We don't  
17 have your clinical notes of the interview; is that correct?

18 A. That is correct.

19 Q. With -- with respect to the MMPI, aren't there aspects of  
20 the MMPI that are designed to identify whether it's a valid  
21 test, whether the person is accurately reporting, things that  
22 might -- might go to whether, in fact, that MMPI can be relied  
23 upon?

24 A. Yes, there are.

25 Q. And we don't have any of that, that data, to review with

1 you, do we?

2 A. I was not asked to provide that.

3 Q. And this evaluation that you did, you saw him just on the  
4 occasions of this one particular evaluation, correct?

5 A. That is correct.

6 Q. All right. And so it's sort of a point-in-time  
7 diagnosis, right?

8 A. Yes, it is.

9 Q. So you can't opine on Mr. Gillispie's current mental  
10 state, correct?

11 A. No, I cannot.

12 Q. And with respect to these various indicia that you've  
13 been describing to meet the diagnostic criteria, these are by  
14 and large, if not exclusively, self-reported items, correct?

15 A. Primarily so, yes.

16 Q. All right. And so we have to rely upon the presumed  
17 veracity of those self reports to meet the diagnostic  
18 criteria, correct?

19 A. Although self report is the primary means for me to  
20 assess somebody during an interview, my clinical judgment  
21 and my assessment skills, as well as the MMPI, all  
22 contribute to the ultimate diagnosis.

23 Q. Yes. And as a clinician, when you perform your  
24 assessment, you, in fact, take as true what the patient tells  
25 you, correct? You take them at their word?

1       **A.**     Typically, yes.

2       **Q.**     All right. And isn't one of the features that should be  
3                 evaluated in performing this sort of assessment that you did  
4                 here whether there's a financial motive that might underlie  
5                 the condition that's being represented and the underlying  
6                 features that might support the condition?

7       **A.**     No.

8       **Q.**     No, you've never seen that?

9       **A.**     Can you rephrase that?

10      **Q.**     Sure. It's -- isn't it typical in the field of  
11                 psychology when you're performing an assessment of an  
12                 individual who's got a matter in litigation to evaluate as  
13                 part of that process, that diagnostic process, to take into  
14                 consideration the fact that they have a monetary incentive to  
15                 get that diagnosis?

16      **A.**     Yes, take into consideration, but not to evaluate.

17      That would not change my evaluative process in how I reach  
18                 my diagnosis. However, it is obviously something that I  
19                 consider when assessing the individual and considering the  
20                 veracity of the reporting.

21      **Q.**     And how is it that you took it into consideration in this  
22                 case?

23      **A.**     It informed my clinical diagnostic impressions. It  
24                 allowed me to -- guided my questions.

25      **Q.**     Did it impact any of your efforts to determine the

1 veracity of the statements that were being made?

2 A. Can you rephrase that question?

3 MR. McLANDRICH: Could you read it back.

4 (The requested portion of the record was read.)

5 THE WITNESS: Any clinical interview and evaluative  
6 process seeks to get to the truth and understands that people  
7 have motivations to say different things, and part of the  
8 process is to assess the truthfulness of the individual.

9 BY MR. McLANDRICH:

10 Q. And, again, without your clinical notes, there is no way  
11 for the defense side of this case to probe whether there were  
12 any things said during that consultation that might reflect on  
13 that issue; isn't that correct?

14 MR. OWENS: Objection, Your Honor.

15 THE COURT: Well, if he can answer it, I'll let him.

16 BY MR. McLANDRICH:

17 Q. Go ahead.

18 A. My understanding of the way this works is that those  
19 could have been subpoenaed and requested, but they were not,  
20 and therefore, I have not provided them.

21 Q. All right. Well, thank you, and that might be a question  
22 that someone might ask, but it's not the question that I  
23 asked.

24 MR. McLANDRICH: Would you read back the question  
25 that I asked, please.

1                   (The requested portion of the record was read as follows:  
2 And, again, without your clinical notes, there is no way for  
3 the defense side of this case to probe whether there were any  
4 things said during that consultation that might reflect on  
5 that issue; isn't that correct?)

6                   MR. OWENS: Objection; foundation, as to what his  
7 notes would provide to the defense for their case.

8                   THE COURT: Overruled.

9                   You may answer.

10                  THE WITNESS: Can you rephrase the question, please?  
11 BY MR. McLANDRICH:

12 Q.               Was there something that you didn't understand about it?

13                  THE COURT: Well, rephrase it, Counsel.

14 BY MR. McLANDRICH:

15 Q.               All right. Well, so, in your notes, you're reflecting --  
16 in my experience, when a clinician's taking notes, they are  
17 taking notes to reflect the various things the patient's  
18 saying, correct?

19 A.               That's correct.

20 Q.               And some of the things the patient's saying might support  
21 the diagnostic conclusion that you reached and some of the  
22 things that the patient's saying conceivably could tend to  
23 undermine the conclusion that you reach, correct?

24 A.               Conceivably. So, yes.

25 Q.               And without those notes, there is no way for the defense

1 to know whether, in fact, there are statements in there that  
2 undermine the conclusion or whether there is only statements  
3 that support the conclusion?

4 MR. OWENS: Objection; foundation.

5 MR. McLANDRICH: It's a hypothetical. I don't know  
6 how a hypothetical needs foundation.

7 MR. OWENS: Is the -- I apologize, Your Honor.

8 THE COURT: Excuse me?

9 MR. OWENS: I apologize.

10 THE COURT: You don't need to apologize.

11 Can you answer that question, Doctor?

12 THE WITNESS: Yes, I can.

13 THE COURT: Okay.

14 THE WITNESS: That is true.

15 THE COURT: I am overruling that objection.

16 MR. OWENS: Got it.

17 BY MR. McLANDRICH:

18 Q. Can PTSD be treated?

19 A. Yes, it can.

20 Q. And you don't know whether, in fact, Mr. Gillispie sought  
21 treatment after leaving your evaluation or not?

22 A. I had no further contact with him following my  
23 evaluation.

24 Q. And so, again, I think as we have already established, as  
25 we sit here today, can't speak to what his mental health is or

1       is not?

2       **A.**     That is correct.

3       **Q.**     Now, would it be -- well, strike that.

4                  Thank you, Doctor. That's all I have for you.

5                  THE COURT: Redirect, within the scope of the cross.

6                  MR. OWENS: Very briefly, Your Honor.

7                  **REDIRECT EXAMINATION**

8       BY MR. OWENS:

9       **Q.**     Dr. Miller, did anybody from Defendant Moore's office  
10      ever send you a subpoena for your notes in this case?

11      **A.**     No, they did not.

12      **Q.**     Now, in your clinical diagnosis, is there a concept  
13      called malingering?

14      **A.**     Yes, there is.

15      **Q.**     And is that the concept that's used to diagnose or a  
16      concept that you use to -- that you would indicate whether or  
17      not you think somebody's not giving you honest information?

18      **A.**     Yes, that's the term we use.

19      **Q.**     And do you use that term and have criteria that you use  
20      to evaluate whether or not you think the people are providing  
21      a false diagnosis, or false symptoms?

22      **A.**     Not specific delineated criterion, but, yes.

23      **Q.**     And at any rate, you -- is there anything noted in your  
24      report about any potential malingering by Mr. Gillispie?

25      **A.**     No.

1       **Q.**     If you believe that he had been malingering, would you  
2                  have noted that in your report?

3       **A.**     I would have, yes.

4       **Q.**     And just by the way, I think you said you do forensic  
5                  evaluations of people involved in litigation?

6       **A.**     I do.

7       **Q.**     Is that something you regularly do?

8       **A.**     On occasion, yes.

9       **Q.**     Okay. Last question. Did you have any reason to  
10                 distrust what Dean reported to you about the things that he  
11                 saw and witnessed in prison?

12      **A.**     I did not.

13                  MR. OWENS: That's it, Your Honor.

14                  THE COURT: Anything?

15                  MR. McLANDRICH: Nothing further. Thank you, Your  
16                 Honor.

17                  THE COURT: Can this witness be excused?

18                  MR. OWENS: Yes, Judge.

19                  THE COURT: Thank you very much, Doctor.

20                  I believe we are back with Detective Moore. And cross by  
21                 the plaintiff has been completed, and the Court will now allow  
22                 the Township, within the parameters previously indicated in  
23                 its directives, to question.

24                  MS. FRICK: Thank you, Your Honor.

25                  THE COURT: You may inquire.

1           **MATTHEW SCOTT MOORE, PLAINTIFF'S WITNESS, PREVIOUSLY SURNED**

2           **CROSS-EXAMINATION**

3           BY MS. FRICK:

4           **Q.**     Good afternoon, Mr. Moore.

5           I think you previously testified -- correct? -- that  
6           your -- that your father was a police officer; is that  
7           accurate?

8           **A.**     Well, that's how he started out. He ended up being the  
9           police chief.

10          **Q.**     So is it fair to say that you grew up around police  
11           officers?

12          **A.**     Oh, absolutely.

13          **Q.**     And you yourself, is it -- am I correct, were a police  
14           officer for 27 years; is that accurate?

15          **A.**     27 years and 23 days.

16          **Q.**     And was your first position as a police officer with  
17           Miami Township?

18          **A.**     Yes, ma'am.

19          **Q.**     And when you became a full-time police officer with Miami  
20           Township, were you required to take an oath of office to  
21           uphold the Constitution of the United States, the State of  
22           Ohio, and the laws of the State of Ohio?

23          **A.**     Yes, ma'am.

24          **Q.**     And would you agree with me that police officer is a  
25           position of trust?

1       A.     Yes, ma'am.

2       Q.     And just very briefly, what -- how would you describe, in  
3            your position as a detective with the Miami Township Police  
4            Department, what your official duties and responsibilities  
5            were?

6       A.     Well, my official duties was, is when we were assigned  
7            cases, were to investigate the cases, follow up leads, try  
8            to find suspects, talk with witnesses, and find any evidence  
9            that we could to put the case together.

10      Q.     And so, Mr. Moore, would you agree with me that as part  
11           of that, included in your official responsibilities was to  
12           turn over any exculpatory or material evidence to a prosecutor  
13           that you had in your possession when an individual was being  
14           charged with a crime?

15      A.     That would be true.

16      Q.     Okay. And so just briefly, as a former police officer  
17           and detective, how would you define "exculpatory evidence"?

18            MR. McLANDRICH: Objection.

19            THE COURT: I'm going to let him, if he knows. Can  
20           you do that?

21            THE WITNESS: I'm not sure of the term  
22           "exculpatory."

23           BY MS. FRICK:

24      Q.     Okay. How -- how would you personally, if you had this  
25           obligation, sort of define what's material evidence that you

1       were to turn over?

2                    MR. McLANDRICH: Objection.

3                    THE COURT: Let him do it.

4                    You can answer.

5                    THE WITNESS: I'm still not sure of what you're  
6 asking. I mean, as far as in what relevance to evidence?

7 BY MS. FRICK:

8 Q. Well, let me ask it a different way then, Mr. Moore.

9                    Is it fair to say that in a case or investigation that  
10 you would have, that you would turn over the entire case file  
11 that you had in your possession?

12 A. Yes, ma'am.

13 Q. Okay. And if a police officer knowingly failed to turn  
14 over the evidence that they had in their police -- or in their  
15 investigative file, would that be sort of outside of what they  
16 are supposed to do?

17 A. Yes, ma'am.

18 Q. So it would be outside of their official duties; is that  
19 fair?

20 A. Yes, ma'am.

21 Q. Okay. And if a police officer knowingly didn't turn over  
22 all of the evidence that they had in a file, is it fair to say  
23 that if they did that on purpose, that that would not be done  
24 in good faith?

25                    MR. KANOVITZ: Objection.

1                   MS. FRICK: I think there was an objection, Your  
2 Honor.

3                   MR. KANOVITZ: No, we do not object.

4                   MR. McLANDRICH: I would. I object.

5                   MS. FRICK: I can rephrase, Your Honor.

6                   THE COURT: Rephrase. I don't know whether the  
7 witness is having problems with the words.

8                   MS. FRICK: Okay.

9 BY MS. FRICK:

10                  **Q.** Would there be any basis for a police officer to  
11 knowingly keep or not turn over all of the evidence in their  
12 case file to a prosecutor?

13                  **A.** All of the evidence should be turned over to the  
14 prosecutor, and in this case, everything was turned over to  
15 the prosecutor.

16                  **Q.** But if there was a situation in which everything was not  
17 turned over to a prosecutor and that was done purposefully or  
18 knowingly, would there be any reason that that would be done,  
19 that you can think of as an officer of 27 years?

20                  **A.** That's a hypothetical, but I don't -- repeat that  
21 question again.

22                  **Q.** Sure. Can you -- is there any reason if a police officer  
23 knowingly or purposely didn't turn over the entire case file  
24 and the evidence contained in there, why there -- why someone  
25 would do that?

1       **A.**     I can't speak to what the reasons would be for someone  
2           else. I can tell you that I know that everything needs to  
3           be turned over to the prosecutor. And that's what was done.

4       **Q.**     Okay. And as a Miami Township police officer, was that  
5           something that you were trained to do, to turn over all  
6           evidence to the prosecutors in an investigation?

7       **A.**     I believe that there had been some training in that. I  
8           know that you go through that through your academy.

9       **Q.**     Okay.

10      **A.**     That all evidence should be turned over, especially if  
11           you are going to end up going to trial or any other court  
12           hearing; that all evidence and all documents that you have  
13           in your possession should be turned over to the prosecutor  
14           in order for them, under discovery, to be given to the  
15           defense.

16      **Q.**     And that's part of the police officer's official duties  
17           and responsibilities, correct?

18      **A.**     Yes, ma'am.

19      **Q.**     Okay. Now, there's been a lot of discussion about  
20           identification procedures, photo arrays, that sort of thing.

21           Back in 1990 when you were a police detective, would you  
22           agree with me that as part of your responsibilities in  
23           investigating a crime, which required a identification, that  
24           one of your duties would be to provide a -- to provide as fair  
25           of an identification that you could within what was available

1 to you?

2 A. Yes.

3 MR. McLANDRICH: Objection.

4 THE COURT: Overruled.

5 You can answer.

6 You guys got to object a little bit louder.

7 MR. McLANDRICH: I missed the turn. Sorry.

8 THE COURT: No problem.

9 BY MS. FRICK:

10 Q. Now, with respect to the evidence in a case that you turn  
11 over to a prosecutor, would you agree with me that as part of  
12 your responsibilities and duties as a police officer, that  
13 you're not to either destroy any evidence or to fabricate or  
14 make up any evidence?

15 A. I would agree with that, yes.

16 Q. And, in fact, if that occurred in any situation, that  
17 could potentially even be a crime in and of itself; is that  
18 correct?

19 A. I believe so.

20 Q. And as a police officer with the oath of office to uphold  
21 the laws of the State of Ohio, would you agree that if, in  
22 fact, evidence was destroyed or fabricated, that an officer  
23 would not be upholding their oath?

24 A. Yes.

25 Q. And would there be any good faith basis for an officer to

1 destroy or fabricate evidence?

2 MR. KANOVITZ: Objection; incomplete hypothetical.

3 THE COURT: Objection, what?

4 MR. KANOVITZ: Incomplete hypothetical.

5 Objection; incomplete hypothetical.

6 THE COURT: Response.

7 MS. FRICK: I can rephrase, Your Honor.

8 THE COURT: Thank you.

9 BY MS. FRICK:

10 Q. If a detective had investigated a case and was ready to  
11 turn the case over to a prosecutor, would there be any good  
12 faith basis for that detective to turn over the case if  
13 evidence had been destroyed?

14 MR. KANOVITZ: Objection; incomplete hypothetical as  
15 to the intent.

16 THE COURT: Overruled.

17 He can answer the question.

18 THE WITNESS: Repeat that question.

19 BY MS. FRICK:

20 Q. When a detective turns over a case -- or when a detective  
21 investigates a case, if that detective knowingly destroys  
22 evidence --

23 A. I got you.

24 Q. -- in your experience as a police officer for 27 years  
25 and as a detective for 23 to 24 years of that, would there be

1       any good faith basis for a detective to have destroyed  
2       evidence?

3       **A.**      I don't think that detectives should be destroying  
4       evidence. Everything needs to be turned over either during  
5       the course of your reference to records and/or you need to  
6       turn it into the property room. And then after that, you  
7       don't know what ends up happening to it.

8                  THE COURT: Detective Moore, I think the question  
9       is, is there any good reason that an officer would do that.

10                 THE WITNESS: I don't know of any reason that they  
11       would do something like that.

12       BY MS. FRICK:

13       **Q.**      And would there be any good faith basis for an officer to  
14       knowingly do that?

15       **A.**      Are you saying that would it be right if they did that,  
16       withheld evidence?

17       **Q.**      Would there be any good reason for an officer to  
18       knowingly do that, to destroy evidence?

19       **A.**      I don't think that detectives and/or officers should be  
20       destroying evidence.

21       **Q.**      And, in fact, if that was done, again, that would be  
22       contrary to what their official responsibilities and duties  
23       are as a police officer, correct?

24       **A.**      If that was done.

25       **Q.**      Okay. And as a police officer investigating a crime, is

1       it part of your duties and official responsibilities to  
2 determine if there's probable cause that a crime was  
3 committed?

4       **A.**     You need to establish probable cause that a crime was  
5 committed in order to charge.

6       **Q.**     And when a police officer turns over a file to the  
7 prosecutor, am I correct in saying at that point the police  
8 officer or detective should have made a determination that  
9 there was probable cause?

10                  MR. McLANDRICH: Objection.

11                  MR. KANOVITZ: I'll join that objection, Your Honor.

12                  THE COURT: Sustained.

13                  BY MS. FRICK:

14       **Q.**     In determining if there is probable cause on an  
15 investigation that is performed by a police detective, is it  
16 fair to say that a police detective cannot misstate, knowingly  
17 misstate or fabricate evidence?

18       **A.**     I would hope that no detective or police officer  
19 intentionally misstated --

20                  THE COURT: Detective Moore, that's just a yes or  
21 no, and then if you want to explain it, then you can.

22                  THE WITNESS: Then, no.

23                  BY MS. FRICK:

24       **Q.**     In fact, it's part of your official duties and  
25 responsibilities to, as a police detective, to provide to the

1 prosecutors in a case that you have investigated actual  
2 evidence that exists and actual statements that have been made  
3 in a case, not to create any such evidence or statements; is  
4 that fair?

5 MR. McLANDRICH: Objection; asked and answered.

6 THE COURT: I think -- I think it was asked whether  
7 or not it was -- there would be a good faith reason to create  
8 testimony. I think that -- I think there was testimony to  
9 that effect. Is that what your question is?

10 MS. FRICK: I'll withdraw the question, Your Honor.

11 BY MS. FRICK:

12 Q. Just one last question, Mr. Moore. If any evidence is  
13 not given to the prosecutor on a case that's been investigated  
14 by the detective, would you agree with me that that would be  
15 contrary to their oath of office?

16 MR. McLANDRICH: Objection; asked and answered.

17 THE COURT: I'll let him answer it.

18 THE WITNESS: Repeat it again.

19 BY MS. FRICK:

20 Q. Sure. If any evidence is not given to a prosecutor on a  
21 case that's investigated, would that be contrary to a police  
22 officer or police detective's oath of office?

23 A. It would.

24 Q. Thank you.

25 THE COURT: Now counsel for Defendant Moore will

1 inquire.

2 **DIRECT EXAMINATION**

3 BY MR. McLANDRICH:

4 Q. All right. Detective Moore, as you know, I'm your  
5 counsel. I am going to ask you some questions about the  
6 events that surround the investigation concerning  
7 Mr. Gillispie, all right?

8 A. Yes, sir.

9 Q. All right. Now, I believe you testified earlier that you  
10 had been a police officer for about five years and a detective  
11 for about six months when you got this case, is that correct?

12 A. Yes, sir.

13 MR. McLANDRICH: And I was giving him an opportunity  
14 to check the exhibits.

15 MR. KANOVITZ: That's all right.

16 BY MR. McLANDRICH:

17 Q. And when you were assigned this investigation, you  
18 started your investigation by reviewing the file?

19 A. Yes, sir.

20 Q. And that would have started with the existing offense  
21 reports?

22 A. With the existing reports that I was provided.

23 MR. McLANDRICH: And let's bring up Defendant's 1,  
24 please.

25 THE COURT: Are these exhibits that have been agreed

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1 to or they have been --

2 MR. KANOVITZ: Defendant's 1 has not been shown yet,  
3 but when he says a page number, I can say whether I object or  
4 not.

5 THE COURT: Well, do you have a page number?

6 MR. McLANDRICH: Well, I was going to pull up all  
7 the page numbers that are in Exhibit 1 and sort of go through  
8 them with the detective.

9 MR. KANOVITZ: Just a moment, Your Honor.

10 No objection on Exhibit 1.

11 MS. FRICK: No, Your Honor, no objection.

12 THE COURT: Thank you.

13 (Exhibit displayed.)

14 BY MR. McLANDRICH:

15 Q. Now, unfortunately, this is a very poor quality copy.  
16 Can you read any of that?

17 THE COURT: We can get him a hard copy.

18 MR. McLANDRICH: Thank you. Thank you, Your Honor.

19 BY MR. McLANDRICH:

20 Q. Looking at Defendant's Exhibit 1, do you recognize this  
21 as one of the initial reports or the initial report that you  
22 would have reviewed when you started your review of the case  
23 file that you received?

24 A. Yes, sir. This is the cover sheet of the report that I  
25 was provided.

1       **Q.**     And who's the officer at the bottom of this report that  
2     took this initial report?

3       **A.**     The initial report was taken by Patrolman Burling.

4       **Q.**     And this particular report also seems to have the  
5     signature of one of the complaining witnesses at that time?

6       **A.**     It actually has both of the complaining witnesses'  
7     signatures on it side by side.

8       **Q.**     And then for the description of the event, he is  
9     referring to, as it says right above, "see supplement,"  
10    correct?

11      **A.**     Yes, sir.

12                  MR. McLANDRICH: So let's have the next page,  
13     please.

14                  (Exhibit displayed.)

15                  BY MR. McLANDRICH:

16      **Q.**     This report also reflects who prepared it, correct?

17      **A.**     Yes, sir, it does.

18      **Q.**     And who is that?

19      **A.**     That would be Patrolman R. E. Burling.

20      **Q.**     And what was the date that he prepared this report?

21      **A.**     The date is August 21st of 1988.

22      **Q.**     And does this report relate to the, as has been referred  
23     to, the Best Products rapes?

24      **A.**     Yes, sir, it does.

25      **Q.**     Does it contain a description of the events?

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1       **A.**     Yes, the whole report would.

2       **Q.**     And I know it's difficult to read, but does this page  
3 contain any description of the suspect?

4       **A.**     Yes, sir.

5       **Q.**     And would you just read that description that's given?

6       **A.**     It is, "Approximately 23 to 25 years of age."

7       **Q.**     Back up a few words.

8       **A.**     Okay. "When the complainant was attempting to start  
9 the vehicle, a white male, approximately 23 to 25 years of  
10 age, 6 foot 3, 250 pounds, short brown hair with a red tint,  
11 very dark tan, wearing whitewashed green pants, a short-  
12 sleeved, pattern design, possibly blue and black colors, and  
13 sunglasses approached --"

14      **Q.**     You can stop there.

15           And so the hair color that was just recited in there was  
16 what?

17      **A.**     Brown hair with a red tint.

18      **Q.**     All right. Thank you.

19           MR. McLANDRICH: Let's go to the next page, please.

20           (Exhibit displayed.)

21           BY MR. McLANDRICH:

22      **Q.**     And this page again continues to describe the course of  
23 the events surrounding the assault, correct?

24      **A.**     Yes, it does.

25           MR. McLANDRICH: Let's go to the next page if there

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1       is one in this exhibit.

2                     (Exhibit displayed.)

3       BY MR. McLANDRICH:

4       **Q.**      And then who signs off on this report?

5       **A.**      Bob -- Patrolman R. E. Burling.

6       **Q.**      And again the date?

7       **A.**      It is on 8-21 of 1988.

8                     MR. McLANDRICH: Exhibit 2, please.

9                     MR. KANOVITZ: Page, counsel?

10                  MR. McLANDRICH: I'm going to again walk him through  
11                  the document.

12                  MR. KANOVITZ: No objection.

13                  MS. FRICK: No objection, Your Honor.

14                  THE COURT: It may be.

15                  (Exhibit displayed.)

16       BY MR. McLANDRICH:

17       **Q.**      Would this have been the next report that was in the file  
18                  you received?

19       **A.**      This is a witness statement?

20       **Q.**      Yes.

21       **A.**      And, yes.

22       **Q.**      And who was the officer that took the statement?

23       **A.**      Patrolman R. E. Burling.

24       **Q.**      And the date?

25       **A.**      On 8-21 of 1988.

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1       **Q.**     And who prepares the narrative in a statement such as  
2                   this?

3       **A.**     You mean who makes the statement?

4       **Q.**     Yes.

5       **A.**     That would be the victim, in this case Connie Wise.

6       **Q.**     And then let's go to the next page, please.

7                   (Exhibit displayed.)

8       BY MR. McLANDRICH:

9       **Q.**     And, again, on this page, she's continuing her  
10                  description of the assault events?

11      **A.**     Yes, sir, she is.

12                  MR. McLANDRICH: Next page, please.

13                   (Exhibit displayed.)

14       BY MR. McLANDRICH:

15      **Q.**     And, again, on this page, continuing her description of  
16                  the events of the assault?

17      **A.**     Yes, marked page 3.

18                  MR. McLANDRICH: Next page, please.

19                   (Exhibit displayed.)

20       BY MR. McLANDRICH:

21      **Q.**     And on this page also?

22      **A.**     Yes, marked page 4.

23                  MR. McLANDRICH: Next page, please.

24                   (Exhibit displayed.)

25       BY MR. McLANDRICH:

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1 Q. And, again, now she's continuing her discussion of the  
2 assault events?

3 A. On page 5, yes.

4 MR. McLANDRICH: Next page, please.

5 (Exhibit displayed.)

6 BY MR. McLANDRICH:

7 Q. Continuing her description?

8 A. On page 6, yes.

9 MR. McLANDRICH: Next page, please.

10 (Exhibit displayed.)

11 BY MR. McLANDRICH:

12 Q. And, again, she's talking about the various events; yes?

13 A. Yes, and that is marked page 7.

14 Q. All right. And on this page, does she make any reference  
15 to things that the suspect might have touched?

16 Direct your attention to four lines down.

17 A. It was, I believe, cash.

18 Q. Are you on --

19 A. I'm on page 8.

20 Q. I'm sorry. You're a page ahead of me.

21 A. Okay.

22 Q. Are you back to page 7?

23 A. I am on page 7.

24 Q. All right. Directing your attention four lines down,  
25 does he make reference to -- or does she, rather, make

1 reference to something that the suspect touched?

2 A. It's actually -- starts at line five, a Polaroid  
3 picture.

4 Q. Okay.

5 A. And goes to line six.

6 MR. McLANDRICH: Let's go to page 8, please.

7 (Exhibit displayed.)

8 BY MR. McLANDRICH:

9 Q. And, again, she's continuing her description of the  
10 assault events, correct?

11 A. On page 8, yes.

12 MR. McLANDRICH: Please proceed to the next page.

13 (Exhibit displayed.)

14 BY MR. McLANDRICH:

15 Q. Again, continuing on her description of the assault; yes?

16 A. Yes, on page 9.

17 MR. McLANDRICH: Proceed to the next page.

18 (Exhibit displayed.)

19 BY MR. McLANDRICH:

20 Q. And, again, continuing her description?

21 A. Yes, on page 10.

22 Q. And here's where we see the reference to the cigarettes  
23 and lighter that were taken, correct? Four lines -- five  
24 lines up from the bottom?

25 A. That and cash.

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1                   MR. McLANDRICH: All right. Next page if there is  
2 one.

3                   (Exhibit displayed.)

4                   THE WITNESS: It's page 11, continuing.

5 BY MR. McLANDRICH:

6 Q. And, again, she's continuing now talking about the, at  
7 some point, post-assault events, correct?

8 A. Yes.

9                   MR. McLANDRICH: Please proceed to the next page.

10                  (Exhibit displayed.)

11 BY MR. McLANDRICH:

12 Q. Here again is a mix of now she's back to talking about  
13 assault events, correct?

14 A. Yes, sir.

15 Q. And these would have all been things that you reviewed as  
16 you started to familiarize yourself with the investigation.  
17 Correct?

18 A. Yes, I would have reviewed this document.

19                  MR. McLANDRICH: Next page.

20                  (Exhibit displayed.)

21 BY MR. McLANDRICH:

22 Q. Again, more description of the events, correct?

23 A. Yes, sir. And it's page 13.

24 Q. Yes, sir.

25                  MR. McLANDRICH: Next page.

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1 (Exhibit displayed.)

2 BY MR. McLANDRICH:

3 Q. And here she's concluding her statement with respect to  
4 describing the events, correct?

5 A. Yes. And it would be page 14.

6 Q. And so this was all background information that you would  
7 have reviewed and started to learn as you began your  
8 investigation?

9           A.       Yes, sir.

10 MR. MCLANDRICH: Next exhibit, please, 3.

11 (Exhibit displayed.)

12 BY MR. McLANDRICH:

13 Q. And this is the sisters' statements, similar to the one  
14 we just reviewed?

15 A. Yes. This would be page 1, starting with Bonnie  
16 Wise -- I mean B.W. Sorry.

17 THE COURT: There is no objection to this, right?

18 MR. KANOVITZ: I'm just checking to make sure all  
19 the pages are there, but I don't have any objection other than  
20 that.

21 MS. FRICK: No, Your Honor, no objection.

22 MR. McLANDRICH: Let's proceed to the next page.  
23 Next page, please.

24 (Exhibit displayed.)

25 THE WITNESS: It's page 2.

1                   MR. McLANDRICH: All right. Let's go to 3.

2                   (Exhibit displayed.)

3                   THE WITNESS: Page 3.

4                   MR. McLANDRICH: Just trying to spare everyone the  
5 agony of going through all these like I was.

6                   But next page, please.

7                   (Exhibit displayed.)

8                   THE WITNESS: There is page 4.

9                   MR. McLANDRICH: Next page, please.

10                  (Exhibit displayed.)

11                  THE WITNESS: Then there is page 5.

12                  BY MR. McLANDRICH:

13                  **Q.** All right. And this is all still her statement of the  
14 events, correct?

15                  **A.** They are all B.W.'s statement, yes.

16                  MR. McLANDRICH: Please proceed.

17                  (Exhibit displayed.)

18                  THE WITNESS: Page 7.

19                  BY MR. McLANDRICH:

20                  **Q.** Okay.

21                  **A.** Page 8.

22                  **Q.** Let's stop at 7. He's catching up here.

23                  MR. McLANDRICH: Go to 8, please.

24                  (Exhibit displayed.)

25                  MR. McLANDRICH: Go ahead to 9.

1 (Exhibit displayed.)

2 MR. McLANDRICH: Let's go to 10.

3 (Exhibit displayed.)

4 MR. McLANDRICH: 11.

5 (Exhibit displayed.)

6 MR. McLANDRICH: Next page, please.

7 (Exhibit displayed.)

8 MR. McLANDRICH: Go ahead, next page.

9 (Exhibit displayed.)

10 BY MR. McLANDRICH:

11 Q. And that concludes her statement.

12 A. There is page 12 and page 13.

13 MR. McLANDRICH: Let's go back to 1 for a moment if  
14 we could, page 1 of this exhibit.

15 (Exhibit displayed.)

16 MR. McLANDRICH: That's all for that exhibit. Thank  
17 you.

18 Let's pull up DX4. This has previously been shown by  
19 plaintiff.

20 BY MR. McLANDRICH:

21 Q. So this is the composite that was one of the items you  
22 would have found in the file, correct?

23 A. That's correct.

24 Q. Now, does this composite relate to the S.C. rape event or  
25 does it relate to the B.W./C.W. rape event?

1 A. This is S.C.'s rape event.

2 Q. And we know that in part how?

3 A. It says that the location is in Harrison Township, and  
4 that the events was on 8-5 of '88 at 1630. One of the other  
5 identifiers at that time given was blue eyes.

6 Q. And, also, does this particular individual have  
7 sunglasses on?

**A.** No, he does not.

**Q.** And S.C.'s assailant, did he have sunglasses on?

**10**      | **A.**      S . C . ' s ?

11 Q. Yes, sir.

12 A. S.C.'s assailant did not have sunglasses on.

13 Q. All right. Which would be another indicator this was the  
14 S.C. composite?

15 A. That's true.

**Q.** And the description of the hair on this composite?

17 A. It says reddish-brown, thinning hair.

18 Q. And then down below, we have two brief descriptors of  
19 both crimes, correct?

20 A Yes

21 Q. And this would again have been something that you  
22 reviewed as you took over the file and started to familiarize  
23 yourself?

24 A. Yes, sir.

25 MR. MCLANDRICH: All right. Exhibit 5 is the other

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1 composite. It's been previously shown.

2 (Exhibit displayed.)

3 BY MR. McLANDRICH:

4 Q. Defendant's Exhibit 5, is this the composite relating to  
5 C.W. and B.W.?

6 A. Yes, sir, it is.

7 Q. And below, it has a brief description of the crime, and  
8 again a description of the suspect, correct?

9 A. Correct.

10 Q. And the description of the suspect that's recited in this  
11 composite is what?

12 A. It is, suspect is a 6 foot 3, 250 pounds, reddish-  
13 brown, thinning hair, well-tanned, wide face, bushy  
14 eyebrows, mustache, last seen wearing light-colored, short-  
15 sleeved shirt with a multi-colored print, gray pleated  
16 slacks, white Reebok with gold and black trim, dark  
17 sunglasses.

18 Do you want me to read the whole thing?

19 Q. No, that's, I think, sufficient.

20 Is an individual of that size common or uncommon? If you  
21 know.

22 A. I -- there's lots of sizes. I mean, you --

23 Q. That's fine.

24 MR. McLANDRICH: Let's pull up Defendant's Exhibit  
25 6, which is the -- can you rotate that at all?

1                   THE COURT: Has this been shown?

2                   MR. McLANDRICH: No. Exhibit 6 has not been shown.

3                   MR. KANOVITZ: No objection.

4                   THE COURT: Any objection?

5                   MS. FRICK: No, Your Honor.

6                   MR. KANOVITZ: I apologize, Your Honor. I thought  
7 the thing that was up was what he was referring to.

8                   THE COURT: No, that was 15. This is 6. Hold on.

9                   MR. McLANDRICH: It's technology at its best.

10                  That's all right.

11                  MR. KANOVITZ: No objection when he does get back to  
12 6.

13                  MR. McLANDRICH: That's all right. Don't worry  
14 about rotating it. Just bring it up then.

15                  (Exhibit displayed.)

16 BY MR. McLANDRICH:

17 Q. Detective, you can see this in your book, correct?

18 A. Yes.

19 Q. I know it's sort of hard for everyone to look at it  
20 sideways.

21                  This is what's referred to in police parlance as a BOLO,  
22 correct?

23 A. Yes, sir.

24 Q. And BOLO's an acronym for what?

25 A. Be on the lookout.

1       **Q.**     And this document was -- well, strike that. Let me ask  
2     it this way: What is the purpose of a BOLO?

3       **A.**     To put out information to all of the local departments  
4     detailing an offense and the fact that they're looking for a  
5     suspect, to let all departments within the area and outer  
6     lying areas to be on the lookout for the individual that may  
7     have committed these acts.

8       **Q.**     All right. And would another purpose of a BOLO also be  
9     to elicit information with respect to whether other  
10    departments had a similar crime?

11      **A.**     It could. You would -- you put this out, and if  
12    anybody has anything that is probably remotely close, they  
13    then would, in turn, contact our department.

14      **Q.**     And so this is an effort to generate leads and  
15    information?

16      **A.**     Yes, sir, it is.

17      **Q.**     Can you read the date on this particular BOLO?

18      **A.**     It was on 8-21 of 1988, and it was put out by Patrolman  
19    R. E. Burling.

20      **Q.**     So this is something that was done essentially  
21    immediately?

22      **A.**     Yes.

23      **Q.**     And does this BOLO also contain a description of the  
24    suspect?

25      **A.**     Yes.

1       **Q.**     Would you read that, please?

2       **A.**     "Suspect will be a white male, 6-3, 250, brown hair,"  
3               it says, "with brown tint. Hair short on top and cut short  
4               above the ears. Suspect was wearing sunglasses at time of  
5               occurrence. Subject was extremely tan, wearing gray  
6               prewashed jeans with light, short-collared shirt, and  
7               possibly blue and black in color, possible pattern shirt."

8       **Q.**     And this is something you also would have reviewed as you  
9               familiarized yourself with the file?

10      **A.**     This would have been in the file, yes.

11               MR. McLANDRICH: Let's go to Defendant's Exhibit 7,  
12               please.

13               THE COURT: Objection?

14               MR. KANOVITZ: Sorry, Your Honor. No objection.

15               MS. FRICK: No objection.

16               THE COURT: It may be published.

17               (Exhibit displayed.)

18               BY MR. McLANDRICH:

19       **Q.**     What is Exhibit 7, please?

20       **A.**     This is a Miami Valley Regional Crime Laboratory form  
21               that we used to send evidence down to the Miami Valley  
22               Regional Crime Lab.

23       **Q.**     And what was sent on this occasion?

24       **A.**     I believe it was sunglasses, one pair of sunglasses.

25               MR. McLANDRICH: Let's go to Defendant's Exhibit --

1 I'm sorry. Is there a second page to this one? I think there  
2 is; yes?

3 Bring up the next page if you can.

4 (Exhibit displayed.)

5 BY MR. McLANDRICH:

6 Q. And there we see what, in fact, is being submitted?

7 A. Yes, sir.

8 Q. And the purpose for which it's being submitted?

9 A. Yes, sir.

10 MR. McLANDRICH: Let's go to Defendant's Exhibits 8,  
11 please.

12 MS. FRICK: No objection here, Your Honor.

13 THE COURT: Thank you.

14 MR. KANOVITZ: I'm sorry. No objection. It's  
15 getting late.

16 (Exhibit displayed.)

17 MR. McLANDRICH: Next page, please.

18 (Exhibit displayed.)

19 BY MR. McLANDRICH:

20 Q. And what is this, Detective?

21 A. This is the supplementary offense report with the  
22 Montgomery County Sheriff's Office.

23 Q. And so this relates to S.C.?

24 A. Correct.

25 MR. McLANDRICH: Let's go to the next page.

1 (Exhibit displayed.)

2 THE WITNESS: Again, it's the supplementary offense  
3 report with the Montgomery County Sheriff's Office.

4 BY MR. McLANDRICH:

5 Q. And, again, this would have been a document that you  
6 reviewed as part of your initial familiarization with the  
7 file?

8       **A.**     Yes, sir. And I also actually believe that these  
9 documents are the same.

10 Q. The next page?

11 A. Yeah, these two pages that we're looking at here are --  
12 have the same wording. They are duplicated.

13 MR. McLANDRICH: All right. Let's just move ahead  
14 then to Defendant's Exhibit 9.

15 MS. FRICK: No objection, Your Honor.

16 MR. KANOVITZ: No objection.

THE COURT: Thank you.

18 (Exhibit displayed.)

19 BY MR. MCLEAND BUCH:

20 Q. And who is the author of this particular document.

23            0        And the date?

24 A 8-22 of 1988

25 Q And so this is the first document that we've seen with

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1 Detective Bailey, correct?

2 A. Yes.

3 Q. And this --

4 MR. KANOVITZ: Objection; that lacks foundation  
5 and -- yeah.

6 MR. McLANDRICH: I'll ask it differently.

7 BY MR. McLANDRICH:

8 Q. Do you recall seeing a prior report with Detective Bailey  
9 as the author?

10 A. Yes, sir.

11 Q. And which one was that?

12 A. I saw supplementary reports filed by Bailey and also  
13 Fritz.

14 Q. Prior to this date?

15 A. Prior to today.

16 Q. Oh, no, I'm sorry. I meant in the sequence of the  
17 documents we have reviewed here this afternoon, you and I. Is  
18 this -- strike it. It's not that important. We will just  
19 move on.

20 And so this purports to be what?

21 A. It is a supplementary report concerning Bonnie and  
22 Connie -- B.W. and C.W.

23 Q. And, again, in this report, he's covering the events of  
24 the assaults with the girls?

25 A. Yes, sir.

1                   MR. McLANDRICH: Let's move on to the next page.

2                   (Exhibit displayed.)

3 BY MR. McLANDRICH:

4 Q. And so here we have in the middle of the page  
5 descriptions, correct?

6 A. Yes, sir.

7 Q. And, in fact, the two descriptions are not identical,  
8 correct?

9 A. That would be correct.

10 Q. And so Bonnie has what with respect to hair color?

11 A. Who?

12 Q. Bonnie. Under the name "Bonnie," what's the description  
13 of the hair color?

14 A. It is white male, 20 to 25 years of age, 6-3, 250  
15 pounds, white tanned face, wore dark sunglasses entire time,  
16 orangish-brown hair.

17 Q. And you can stop there. I was really just asking about  
18 hair color.

19 THE COURT: Let's use initials.

20 MR. McLANDRICH: I'm sorry. Yes, sir.

21 BY MR. McLANDRICH:

22 Q. With respect to C.W., what is the hair color referenced  
23 in her description on that page?

24 A. Is a white male, 23 years of age, 6-3, 250 pounds,  
25 wide, very tanned face, thin brownish red-hair, straight

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1       cut, curled at the collar, mustache, bushy eyebrows, wore  
2       dark sunglasses the whole time.

3       **Q.**     That's it. Thank you.

4                    MR. McLANDRICH: Let's go to the next page, please.

5                    (Exhibit displayed.)

6       BY MR. McLANDRICH:

7       **Q.**     And, again, we're retracing the events in this report,  
8       correct?

9       **A.**     Yes, sir.

10      **Q.**     All right.

11      **A.**     And this is page 3 of Detective Bailey's supplementary  
12       report.

13                    MR. McLANDRICH: Let's move ahead then to Exhibit  
14       10.

15                    MS. FRICK: No objection.

16                    THE COURT: Thank you.

17                    MR. KANOVITZ: No objection.

18                    THE COURT: Thank you.

19       It may be published.

20                    (Exhibit displayed.)

21       BY MR. McLANDRICH:

22      **Q.**     What is Exhibit 10, please?

23      **A.**     This is another Miami Valley Regional Crime Laboratory  
24       request form.

25                    MR. McLANDRICH: And let's go to the next page.

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1 (Exhibit displayed.)

2 BY MR. McLANDRICH:

3 Q. And what is being submitted to the crime lab with respect  
4 to this report?

5 A. There is the clothing and bandanas and a white envelope  
6 containing a photograph.

7 Q. All right. And then next to that indicates what is to be  
8 requested of the crime lab?

9      | A.      Correct.

10 Q. And what is it for the clothes, and what is it for the  
11 photograph?

12 A. For the -- for Bag Number 1, it says to check for  
13 semen, attention on the gray T-shirt, and to check for hairs  
14 and fibers.

On Bag Number 2, it says to check for hairs and fibers,  
or fibers and hair.

17 And bag -- no. White envelope containing photographs  
18 says check for latent fingerprints.

19 MR. McLANDRICH: Let's proceed to Exhibit 11,  
20 please.

21 MR. KANOVITZ: No objection.

22 MS. FRICK: No objection.

23 THE COURT: Thank you.

24 (Exhibit displayed.)

25 BY MR. McLANDRICH:

1       Q.     And what is Exhibit 11, please?

2       A.     This is the Miami Valley Regional Crime Lab report  
3           concerning the black sunglasses with red trim that had been  
4           sent to them with the results.

5       Q.     And the results were what in substance?

6       A.     The latent prints on the sunglasses in Exhibit 1, being  
7           the sunglasses, they were evaluated and found to have no  
8           value for identification purposes.

9       Q.     And the date of this document?

10      A.     It's dated August 26, 1988.

11      Q.     And sent to whom?

12      A.     Sent to the crime lab and then on to the latent print  
13           examiner.

14      Q.     I am sorry. The letter is directed to whom? The letter  
15           in front of you. Top of the letter.

16      A.     Oh, it's to Detective G. L. Bailey, Miami Township PD.

17                   MR. McLANDRICH: Let's move on to Exhibit 12,  
18                   please.

19                   MS. FRICK: No objection.

20                   MR. KANOVITZ: No objection, Your Honor.

21                   THE COURT: It may be published.

22                   (Exhibit displayed.)

23                   BY MR. McLANDRICH:

24      Q.     And is Exhibit 12 another such letter from the Miami  
25           Valley Crime Lab?

1       **A.** Yes, sir, it is.

2       **Q.** And this one is with respect to the Polaroid?

3       **A.** Yes, sir, it is.

4       **Q.** And what does it indicate with respect to the evidentiary  
5 value of the Polaroids?

6       **A.** It says that the latent prints developed on the photo  
7 in Exhibit Number 1 were evaluated and found to have no  
8 value for identification purposes.

9       **Q.** And the date on this document?

10      **A.** September 21, 1988.

11      **Q.** And this is before your involvement in the case, correct?

12      **A.** All of this is, yes.

13                    MR. McLANDRICH: And moving on to Exhibit 14,  
14 please.

15                    MR. KANOVITZ: No objection.

16                    MS. FRICK: 14?

17                    MR. McLANDRICH: I am sorry. 13.

18                    MR. KANOVITZ: No objection to that one either.

19                    MS. FRICK: No objection, Your Honor.

20                    THE COURT: All right.

21                    (Exhibit displayed.)

22                    BY MR. McLANDRICH:

23       **Q.** Is Exhibit 13 another such letter from the Miami Valley  
24 Regional Crime Lab?

25       **A.** Yes, sir, it is.

1       Q.     And is this one with respect to the two bags of clothes?

2       A.     Yes, sir, it is.

3       Q.     And what was the conclusion of the crime lab with respect  
4            to the evidentiary value of the clothes?

5       A.     Serological analysis of Exhibit 1A, which is the gray  
6            T-shirt, failed to reveal the presence of seminal fluid.

7       Q.     And then with respect to hairs and fibers, they did find  
8            some hairs and fibers, correct?

9       A.     Examination of Exhibit 1, clothing, B -- B.W. revealed  
10          the presence of light lavender and orange synthetic fibers;  
11          white, blue, red, and black cotton fibers; and two light  
12          brown Caucasian head hair.

13       Q.     And with respect to Bag 2?

14       A.     Examination of Exhibit 2, clothing, C.W., revealed the  
15          presence of blue cotton and light lavender synthetic fibers,  
16          Caucasian pubic hair, and light brown Caucasian head hair.

17                    MR. McLANDRICH: Next page, please.

18                    (Exhibit displayed.)

19                    MR. McLANDRICH: So nothing further.

20                    Proceed to Exhibit 14, please.

21                    MS. FRICK: No objection, Your Honor.

22                    MR. KANOVITZ: No objection.

23                    THE COURT: It can be displayed.

24                    (Exhibit displayed.)

25                    BY MR. McLANDRICH:

1       **Q.**     What is Exhibit 14, please?

2       **A.**     This is the prescribed Miami Township document. It is  
3                  a property release form.

4       **Q.**     All right. And what is being released?

5       **A.**     In this case, two bags of clothes and one pair of  
6                  sunglasses, and picture.

7       **Q.**     And the date on this?

8       **A.**     9-28 of 1988.

9       **Q.**     And this would have been prior to your involvement?

10      **A.**     Yes, sir, it would.

11                  MR. McLANDRICH: All right. You can take that down.

12                  BY MR. McLANDRICH:

13      **Q.**     So these would have all been things that comprised the  
14                  file when you received it. Yes?

15      **A.**     Yes. And then there were some printouts. But, yes,  
16                  this is most of it.

17      **Q.**     And so then, Detective, did there come a time when you  
18                  came into the possession of certain GM identification badges?

19      **A.**     Yes, sir.

20      **Q.**     And when was that?

21      **A.**     Well, initially would have received them on April 19th.

22      **Q.**     And were you assigned to the case on April 19, 1990?

23      **A.**     Yes, 1990, yes. No, I was not assigned to the case at  
24                  that point.

25      **Q.**     And what did you do with those photographs when they came

1       into your possession?

2       **A.**     They were given back to Steve Fritz.

3       **Q.**     And do you know what Detective Fritz did with those  
4           photographs?

5       **A.**     As far as I know, put them in the file at that time.

6       **Q.**     All right. But in any event, you had no involvement with  
7           them at that time?

8       **A.**     No.

9       **Q.**     Did you take any other action with respect to the --  
10          strike that question.

11          Did you understand at that time, on April 19, 1990, that  
12          the reason you were receiving the GM ID badges or the police  
13          department was receiving the GM ID badges related to  
14          Mr. Gillispie?

15       **A.**     Did I understand what part of that?

16       **Q.**     That the reason that your -- that the police department  
17          was being given these ID badges was because someone thought  
18          Mr. Gillispie might be a suspect in the Best Product rapes.  
19          Is that something you were aware of at that time?

20       **A.**     I mean, I knew that Mr. Wolfe had come in and presented  
21          those items concerning this case.

22       **Q.**     And was there any investigative activity that you engaged  
23          on on April 19, 1990?

24       **A.**     No.

25       **Q.**     And so there came a time when you were placed into the

1 detective bureau, correct?

2 A. I believe that we've established that I went in there  
3 on November 5th of 1989.

4 MR. McLANDRICH: Can we pull up -- could we pull up  
5 Defendant's Exhibit 31, please.

6 MS. FRICK: No objection, Your Honor.

7 THE COURT: Thank you.

8 MR. KANOVITZ: No objection.

9 THE COURT: You may display.

10 (Exhibit displayed.)

11 BY MR. McLANDRICH:

12 Q. What is Defendant's Exhibit 31, please?

13 A. This is a personnel order through Miami Township Police  
14 Department.

15 Q. And the date of issue and the effective date, please?

16 A. Date of issue is November 2, 1989, and effective date  
17 is November 5, 1989.

18 Q. And what does this document do? Is this essentially the  
19 assignment of you to the detective bureau?

20 A. Yes, sir.

21 Q. So you went into the detective bureau on November 5,  
22 1989?

23 MR. KANOVITZ: Objection; asked and answered.

24 THE COURT: I'm allowing it.

25 THE WITNESS: It shows that Corporal Bailey is

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1       leaving the detective section, and I am going into the  
2       detective section.

3       BY MR. McLANDRICH:

4       **Q.**     All right. And so on that date you're going in, he's  
5       going out?

6       **A.**     Yeah.

7       **Q.**     All right. And you were not assigned the base -- the  
8       Best Products rape case on that date, were you?

9       **A.**     No, I was not.

10      **Q.**     When were you assigned the Best Products rape case?

11      **A.**     It was laid on my desk on June 15th of 1990.

12      **Q.**     And why was that?

13      **A.**     Detective Sergeant Steve Fritz was leaving the police  
14       department, and he gave the case to me.

15            MR. McLANDRICH: Can we bring up Defendant's 17,  
16       please.

17            MS. FRICK: No objection, Your Honor.

18            MR. KANOVITZ: Just a moment, please.

19            No objection.

20            THE COURT: It may be published.

21            (Exhibit displayed.)

22       BY MR. McLANDRICH:

23       **Q.**     And what is Defendant's Exhibit 17?

24       **A.**     This is -- this is a personnel order through Miami  
25       Township Police Department.

1       **Q.**     Okay. And does this document reflect Mr. Fritz leaving  
2                  the department effective June 15th of '90 and Detective  
3                  Sergeant Wilson entering the detective section on that date?

4       **A.**     Yes, sir, it does.

5       **Q.**     And so then, you are now assigned the file. Did you  
6                  start working it on that very day?

7       **A.**     No, sir. I stuck that into my drawer.

8       **Q.**     And then, when did you start working the file?

9       **A.**     I believe that I pulled it out several days later, on  
10                 June 18, 1990.

11      **Q.**     And what would you have done on June 18, 1990?

12      **A.**     We had went to a new computer reporting system. As you  
13                 saw from the previous reports, they were all handwritten.  
14                 We had a new computer reporting system, and I entered the  
15                 start of my report and my investigation into the computer.

16      **Q.**     So what you're saying is after that date, when you  
17                 started making reports, they were all computerized reports?

18      **A.**     Yes, sir.

19      **Q.**     And prior to that time, were the reports some sort of  
20                 multi-part form?

21      **A.**     There were different screens that produced separate  
22                 documents.

23      **Q.**     Okay. My question was prior to your starting in the  
24                 computer, the old forms, were the old forms some sort of a  
25                 multi-part form that made multiple copies at once when the

1 detective filled it out? If you know.

2 A. If you're talking about carbon, yes.

3 Q. Yes. And so when you did start working on the file on  
4 June 18th, what you would have done would have been reviewed  
5 the documents that we went through, essentially Exhibits 1  
6 through 14, plus whatever other papers you referred to?

7 A. Yes, sir.

8 Q. In that file at that time, were there any reports from  
9 Detective Bailey signed off on by Detective Fritz that  
10 purported to exclude Mr. Gillispie as a suspect?

11 A. Absolutely not.

12 Q. Have you ever seen such reports?

13 THE COURT: Five minutes, counsel.

14 THE WITNESS: I have never seen any reports like  
15 that.

16 BY MR. McLANDRICH:

17 Q. And had you seen such reports, would you have destroyed  
18 them or suppressed them?

19 A. Absolutely not.

20 Q. And if you had seen such reports, would you have stopped  
21 investigating Mr. Gillispie because of such a report?

22 A. I would have to say that that would probably stop me  
23 from starting an investigation.

24 Q. All right. And because you didn't see such reports, you  
25 continued an investigation with respect to Mr. Gillispie?

1       **A.**     That's true.

2       **Q.**     And along with the reports we have discussed, you had  
3           certain GM identification badges, correct?

4       **A.**     Correct.

5                   MR. McLANDRICH:   Would you go to Plaintiff's 285,  
6                   please.   It's the one with the GM identification badges.

7                   So this is Plaintiff's Exhibit 285, page 10.

8                   MS. FRICK:   No objection, Your Honor.

9                   MR. KANOVITZ:   No objection.

10                  THE COURT:   All right.

11                  (Exhibit displayed.)

12                  BY MR. McLANDRICH:

13       **Q.**     So in addition to the composite, we have four GM  
14           identification badges; is that correct?

15       **A.**     Four different, yes.

16       **Q.**     And were those the badges that were in the file when it  
17           was delivered to you?

18       **A.**     I believe so.

19                   MR. McLANDRICH:   And can you focus on those four and  
20           blow it up, please.

21                  BY MR. McLANDRICH:

22       **Q.**     Now, you were asked earlier on direct whether these  
23           individuals that were in the other GM badges were like and  
24           similar to Mr. Gillispie. And now having an opportunity to  
25           see those badges, do you consider those individuals like and

1 similar to the description of the suspect and to  
2 Mr. Gillispie?

3 MR. KANOVITZ: Objection to the form of the  
4 question.

5 THE COURT: Overruled.

6 You can answer, if you can.

7 THE WITNESS: The documents themselves are like and  
8 similar. The individuals are not.

9 BY MR. McLANDRICH:

10 Q. And I'm not talking about the document. I'm talking  
11 about the faces.

12 THE COURT: I think he answered, Counsel.

13 MR. McLANDRICH: Yes, thank you, Your Honor.

14 THE COURT: And I think we're done.

15 MR. McLANDRICH: You can take it down. We're done.

16 THE COURT: Ladies and gentlemen, we've come to a  
17 point in time where we're going to recess for the day. As a  
18 matter of fact, we're going to recess until Monday. So please  
19 have a wonderful weekend. Get a lot of rest.

20 We have -- we've covered a lot of territory. We've had  
21 long days, and I appreciate your attention and patience for  
22 the Court and for the parties.

23 Again, I'm going to remind you, and it might be  
24 especially difficult on a weekend, but please remember my  
25 admonitions: Don't discuss the case amongst yourselves or

1       with anyone else and don't formulate any opinions or  
2       conclusions. It would be totally improper at this point in  
3       time. Even though you have heard a good bit of evidence, you  
4       have not heard all the evidence, nor have you heard the  
5       arguments of counsel or the instructions of the law.

6           So we're going to recess. If you'll please be back here  
7       approximately -- just a little bit before 9 so we can get  
8       started, and we'll do our best to keep things moving and work  
9       within the parameters, I hope, or we talked about at the  
10      beginning. No guarantees, but we'll try.

11           So anything further to come before the Court, counsel?

12           MR. KANOVITZ: Not at this time, Your Honor.

13           MR. McLANDRICH: No, thank you, Your Honor.

14           MR. HERMAN: No, Your Honor.

15           THE COURT: Counsel, as I indicated to you  
16       previously in pretrial or a conference, you do need -- we need  
17       a couple minutes, or my staff attorneys need a couple minutes  
18       with you here at the end of the day before you leave, but  
19       everyone have a safe trip home.

20           THE COURTROOM DEPUTY: All rise. This court stands  
21       in recess.

22           (Jury out at 4:33 p.m.)

23           (Court adjourned at 4:33 p.m.)

24

25

1 CERTIFICATE OF REPORTER  
2

3 I, Mary A. Schweinhagen, Federal Official Realtime  
4 Court Reporter, in and for the United States District Court  
5 for the Southern District of Ohio, do hereby certify that  
6 pursuant to Section 753, Title 28, United States Code that the  
7 foregoing is a true and correct transcript of the  
8 stenographically reported proceedings held in the  
9 above-entitled matter and that the transcript page format is  
10 in conformance with the regulations of the Judicial Conference  
11 of the United States.

12

13 s/Mary A. Schweinhagen

14

21st of December, 2023

15

MARY A. SCHWEINHAGEN, RDR, CRR  
FEDERAL OFFICIAL COURT REPORTER

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